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SETTLED ESTATES ACT
AND ORDERS

SECOND EDITION

J. W. MIDDLETON.

Cw. U.K.



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THE
SETTLED ESTATES ACT, 1877,

AND THE
SETTLED ESTATES ACT ORDERS, 1878.

With Introduction, Notes and Forms,

AND
SUMMARY OF PRACTICE.

BY
JAMES W. MIDDLETON, B.A.,
OF LINCOLN'S INN, BARRISTER-AT-LAW.

SECOND EDITION.



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PREFACE

TO THE SECOND EDITION.

THIS edition brings the law and the practice under the Settled Estates Act down to the present time.

The Orders issued in January last are embodied in the work and annotated, the changes in the practice being pointed out. The Summary of the Practice has been rewritten, the latest decisions under the Act are referred to, and a number of new Forms (besides those appended to the Orders) have been added. The Author has adopted the valuable suggestion of one of his reviewers by giving in the Index of Cases full references to all the reports of each case, so that a person wishing to see a decision mentioned in the notes can easily ascertain whether it is reported elsewhere than in the report referred to.

J. W. M.

8, NEW SQUARE, LINCOLN'S INN.
March, 1879.

PREFACE

TO THE FIRST EDITION.

IN the preparation of the following work the author has been guided by the desire to produce a practical edition of the Settled Estates Acts, 1877, for the use of the profession. With this object in view he has aimed at convenience of reference at the risk of occasional repetition. In the table of contents and throughout the body of the work the various sections of the present Act have been collated with the sections of the Acts now repealed, so as to show which sections are new, which are re-enacted, and which are amended, and in what the amendments consist. The new provisions and the amendments introduced have moreover been tabulated in the Introduction. The authorities are arranged under the sections and rules to which they refer, and are so cited as to follow, wherever practicable, the words used by the judge rather than the head or marginal note of the case. The Appendix contains a collection of forms arranged in the order of the sections from which they are derived. Lastly, the summary of practice has been so written as to give a comprehensive view of the practice under the Act, unincumbered by authorities, which will be found on reference to the several sections and orders therein indicated.

J. W. M.

8, NEW SQUARE, LINCOLN'S INN,
24th January, 1878.



INTRODUCTION.

THE Settled Estates Act, 1877, was passed, as the preamble states, for the two-fold purpose of consolidating and amending the law relating to leases and sales of settled estates. The consolidation of the five statutes which heretofore embodied this law will prove a great convenience in the proper administration of their provisions. At the same time, the amendments introduced are such as to render the advantages of the law more easily and quickly attainable, and less open to be defeated by the capricious opposition of persons holding small interests, or by inherent difficulties in serving and obtaining the consents of persons whose interests are small or remote, or sufficiently represented by persons already before the Court.

The Acts which form the groundwork for the present consolidating Act, were passed respectively in the years 1856, 1858, 1864, 1874, and 1876. In order to understand thoroughly the progress that has been made since the Act of 1856, in facilitating the jurisdiction thereby conferred on the Court of Chancery, to introduce powers of sale and granting leases into settlements which wanted them, it will be advantageous to trace shortly the history of the Acts, and to examine the different stages of the law relating to this jurisdiction.

The causes which led to the passing of the Act of 1856, are thus stated by Mr. Brickdale (p. 6): The previous Acts.

"The defectiveness of the general law led to elaborate powers in settlements, defectiveness in settlements led to Private Estates Acts, and the inconvenience of Private Estates Acts to the present public Act." The Act of 1856, however, was not so framed as to render an application to the Court under it an easy and inexpensive proceeding, as it followed in general the practice in Parliament on Private Estates Bills. The Act of 1858 was directed to the explanation of some controverted points merely which had arisen on the original Act, and amended and extended the latter in some important particulars, but did not touch the procedure. The first important step towards simplifying the procedure was taken by the Act of 1864, whereby the condition that leases should be settled by the court was removed, and the expense of applications for the sanction of leases was considerably diminished. The next Act, passed in 1874, made another important advance, by enacting that persons who did not consent or concur in the application, and who did not deliver a notification in reply to a notice duly served upon them, might be deemed to have submitted their rights and interests to the Court. It also enabled the Court under given circumstances to dispense with the consent of persons interested. The last of the four Settled Estates Acts passed in 1876, only provided for the cost of making dedications for roads, &c. But, notwithstanding these various amendments, the working of the principal Act was slow and expensive. Its provisions "proved extremely beneficial in numerous cases, where from the want of an adequate trust or power in the settlement, the opportunity of effecting an advantageous sale would otherwise have been perhaps irretrievably lost, but their practical utility has been greatly impaired by the stringent statutory

requirements, as to notices, consents, &c., and the cumbrous machinery which has been provided for the exercise of the jurisdiction" (*Dart's Vendors and Purchasers*, 5th ed. p. 1182). The present Act, 40 & 41 Vict. c. 18, by repealing all the previous Acts, has swept away many of the obstacles which impeded the working of the original Act of 1856. The removal of the necessity for advertisements, the provisions extending the powers of the Court to dispense with consents and with notices in certain given cases, and the amendment whereby an express declaration in the instrument is rendered alone sufficient to oust the jurisdiction, and to exclude the operation of the Act, will have done much to make the machinery less cumbrous, more easily set in motion, and subject to fewer checks, through trifling informalities. The present Act is in the main framed on the lines of the five Acts which it repeals, but points which have been the subject of conflicting judicial opinions have been cleared up, several important new provisions have been introduced, and several sections amended so as to smooth away their difficulties and to extend their provisions. The changes introduced into the law are here tabulated.

The following are the principal new provisions introduced by the Act of 1877 :—

1. The Court is empowered (sec. 17) to sanction proceedings for the protection of any settled estate, and to provide for the costs of such proceedings.

2. Section 25 removes the obstacle which hindered the exercise of the powers conferred by the Act in cases where the tenant-in-tail was an infant, and it is now competent to the Court to dispense with the consent of all persons holding interests subsequent to that of such infant.

3. Notice of an application under the Act may now be dispensed with where the interest of a person who cannot be found, or whose existence is uncertain, or who cannot be served without disproportionate expense, are small, or remote, or sufficiently represented by those of other persons holding analogous interests (sec. 27).

4. Money paid into Court under the Act in respect of any estate less than a fee simple, or of a reversion, may, on the petition of the person interested, be invested at the discretion of the Court (sec. 37).

5. The Court of Chancery of the County Palatine of Lancaster, in England, and the Landed Estates Court in Ireland, have received concurrent jurisdiction with the Chancery Division of the High Court, and the Court of Chancery in Ireland, in matters and proceedings under this Act (secs. 44 and 45).

Amend-
ments.

The following are the most important amendments introduced by the present Act :—

Leases in
Ireland.

1. Leases in Ireland, whether agricultural or occupation leases, sanctioned by the Court (sec. 4, subs. 1), or leases by tenants for life (sec. 46), are extended to thirty-five years.

Custom of
the district.

2. The power given to the Court to recognize the custom of a district by granting leases for longer terms than those fixed by the Act, was formerly confined to building leases, but is now extended to all except agricultural leases (sec. 4, subs. 1).

Rent less
than the
"best rent."

3. In a mining, or a repairing, or a building lease, a peppercorn rent, or a rent smaller than the "best rent," may now be reserved during the first five years of the term (sec. 4, subs. 2).

Dedications.

4. The cost of constructing roads, streets, &c. (sec. 21), may be thrown on the income of settled property in the discretion of the Court, and the Court can make provision for the expense of maintaining such works in repair.

5. A petition under the Act may be presented by the assignee of any person who but for the assignment would have been entitled to petition (sec. 23).

6. Perhaps the most important amendment is contained in section 31, by which the insertion in the newspapers of advertisements, giving notice of an application under the Act, is only to take place "if the Court shall so direct, but not otherwise."

7. Moneys paid into the Bank of Ireland under this Act may be applied in the purchase or redemption of rent charge in lieu of tithes, crown rent, or quit rent (sec. 34). Application of money in Ireland.

8. Section 36 sets at rest the controverted point whether or not money paid in under the Settled Estates Act was "cash under the control of the Court," and affirms the decisions which held it to be such. Cash under control of the Court.

9. An "express declaration" is alone to be taken as excluding the operation of the Act—"manifest intention," "reasonable inference," and "extrinsic circumstances or evidence," will no longer stand in the way of an order being made in exercise of the powers conferred by it (sec. 38). Exclusion of the Act.

10. Sec. 32 of the original Act is extended by section 46 of the Act of 1877, so as to give persons having estates *pour autre vie*, similar powers to those enjoyed by tenants for life. Leases made under this section may now be made to take effect within one year after the making thereof. The original Act required a condition of re-entry "on non-observance of any of the covenants or conditions" contained in the lease—these words have been struck out.

The advantages of these new enactments and amendments, will be apparent on comparing the law under the repealed Acts with the law as it

now stands. In the first place, the delay is in all ordinary cases very considerably diminished, and with it the expense of the application. Formerly, after the presentation of the petition, a summons had to be taken out for directions as to advertisements. It was usual for these to be repeated during three successive weeks and the petition could not be set down for hearing before three weeks had elapsed since the appearance of the last of the advertisements. The inconvenience of this delay of at least six weeks was well illustrated in the course of the debate on the Settled Estates Bill of 1864, by the Earl of Malmesbury. A fashionable watering-place was growing very rapidly, and had extended itself to his settled estates, but the builders and contractors could not wait for several weeks until an order could be obtained under the Act authorising leases of the settled estates, and consequently they took building leases of other lands which were not under a similar disadvantage. In all ordinary cases, there need not be under the present Act any delay between the presentation of the petition and its being set down for hearing. In the second place, great, and in some cases insuperable difficulty arose from the absence out of the jurisdiction, or from ignorance of the whereabouts of a party interested in the settled estate, or from some other similar cause. Consents were at times obstinately refused without a tangible reason, and were even occasionally withheld to extort a money payment for giving them. The Court is now at liberty to dispense with notice in the former cases, and to dispense with consent in the latter, thereby avoiding such obstacles to the exercise of the powers given to it.

The present Act has made no alterations in the law applicable to cases where infants are concerned; it will still be necessary to have a special

guardian-appointed, and the consent or application of the natural or testamentary guardian will continue to be insufficient. Nor does the Act provide for the case where an interest is vested in a person of unsound mind not so found by inquisition ; if notice cannot be dispensed with under section 27, or consent under section 28, the only alternative will be as heretofore, to have a committee duly appointed.

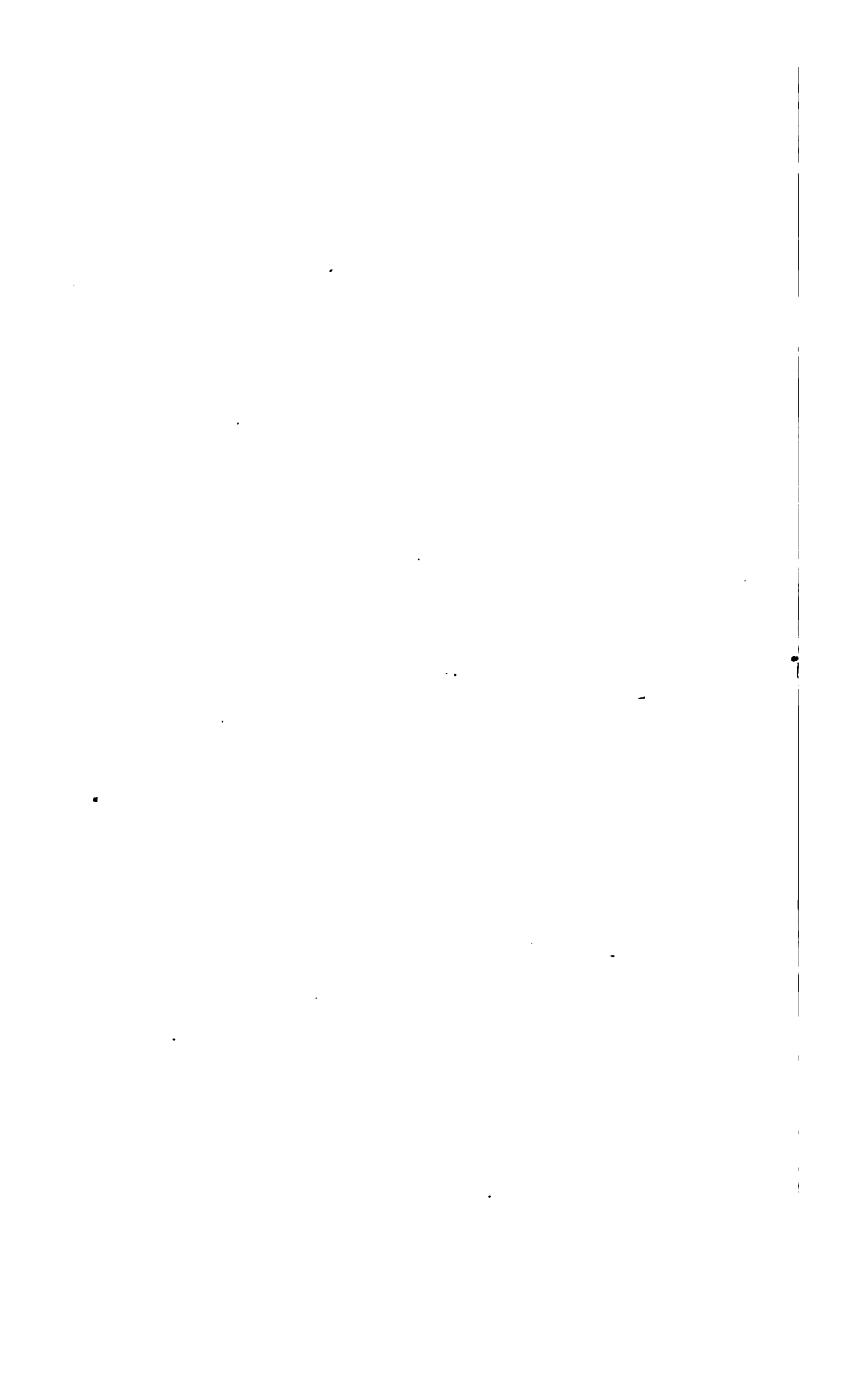


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SETTLED ESTATES ACT.

*An Act to consolidate and amend the Law
relating to Leases and Sales of Settled
Estates.* A.D. 1877.
[28th June 1877.]

WHEREAS it is expedient to consolidate and amend the law relating to leases and sales of settled estates :

Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. This Act may be cited for all purposes as Short title.
"The Settled Estates Act, 1877."

The object of the original Act (19 & 20 Vict. c. 120), as stated in the preamble to it, was to enable the Court "in certain cases to authorize leases and sales of settled estates, where it shall deem that such leases or sales would be *proper and consistent with a due regard for the interests of all parties entitled under the settlement,*" and also to give "persons in possession of land for certain limited interests, power to grant agricultural or occupation leases thereof at rack rent for a reasonable period." The words in italics have been retained in the 4th, 16th, and 17th sections, which are the enabling sections of the Act.

The intention of the Legislature was to make all real property, except a few estates which are entailed by Act

SETTLED ESTATES ACT.

of Parliament, alienable as it would be if proper powers of sale were inserted in all settlements; and in order to give effect to that intention a liberal construction ought to be put on the language of the Act (*In re Sheppard's Settled Estates*, 8 L. R. Eq. 573, per V.-C. M.; and see *In re Clark*, 1 L. R., C. A., 294) with a view to avoid delay and expense (*Beioley v. Carter*, 4 L. R., C. A., 240; *In re Morgan's Settled Estates*, 9 L. R. Eq. 588).

Interpretation of "settlement" and "settled estates."

2. The word "settlement" as used in this Act shall signify any Act of Parliament, deed, agreement, copy of court roll, will, or other instrument, or any number of such instruments, under or by virtue of which any hereditaments of any tenure or any estates or interests in any such hereditaments stand limited to or in trust for any persons by way of succession, including any such instruments affecting the estates of any one or more of such persons exclusively.

This definition is taken verbatim from 19 & 20 Vict. c. 120, sec. 1.

The Act only includes settlements made after the 1st of November, 1856, so far as regards the provisions respecting demises by tenants for life, independently of the Court (see *post*, sec. 57), otherwise it applies generally to all settlements.

"LIMITED TO OR IN TRUST FOR ANY PERSONS IN SUCCESSION."—The result of the cases containing interpretations of these words is, that there must be, at the time of the settlement taking effect (*post*, subsec. 4), existing or future interests to arise in succession. Therefore, where the limitations are spent and the property absolutely vested in fee, the Court has no jurisdiction (*Re Birtle*, 11 W. R. 739). Nor is there a "succession" within the meaning of the section, where the limitation takes the form of a gift to a class, *e.g.*, to such of the children of a deceased person who should attain twenty-one (*Re Burdin's Will*, 7 W. R. 711, per

V.-C. K.—S.c. on appeal, 5 Jur., N. S., 1378, 28 L. J. Ch. 840, where the L. JJ. thought the case very doubtful, but supported the view of the V.-C.). In *Re Horne's Settled Estates*, 29 L. T., N. S., 830), however, a devise to trustees upon trust for A. in case she should attain twenty-one or marry before attaining that age followed by a gift over in strict settlement in case A. should not attain a vested interest, was held to be a "succession" within the Act.

The following were held to be limitations "by way of succession"—trust out of income to pay an annuity to the testator's wife for life, and subject thereto trust as to both capital and income for the testator's children equally (*Collett v. Collett*, 2 L. R. Eq. 203); a devise of a house upon trust to permit the testator's wife to occupy it during widowhood, and then to sell (*Carlyon v. Truscott*, 20 L. R. Eq. 348); a limitation for the separate use of a married woman for life without power of anticipation followed by trusts for sale and investment and trusts as to the proceeds for the children of the married woman (*In re Morgan's Settled Estates*, L. R. 9 Eq. 587); an ultimate limitation amounting to a gift to the heirs of a given person as purchasers, and not by descent, "in trust for the person or persons whom she should leave her heir, or co-heirs at law, and the heirs or assigns of such person or persons respectively" (*Beioley v. Carter*, 4 L. R., C. A., 230).

The term "settled estates" as used in this Act shall signify all hereditaments of any tenure, and all estates or interests in any such hereditaments, which are the subject of a settlement; and for the purposes of this Act a tenant-in-tail after possibility of issue extinct shall be deemed to be a tenant for life.

This definition is taken verbatim from 19 & 20 Vict. c. 120, sec. 1.

The "SETTLED ESTATE" is only the estate or interest

subject to the settlement, *e.g.*, if lands be settled for a term of years upon certain trusts, the Court can only sell this term (*Grey v. Jenkins*, 26 Beav. 355), though it has been said that if an undivided share of an estate is subject to a settlement, the entirety ought to be considered a settled estate (*Re Shephard's Settled Estates*, 8 L. R. Eq. 571).

"OF ANY TENURE, AND ALL ESTATES OR INTERESTS," &c., *e.g.*, copyholds (*In re Adair's Settled Estates*, 16 L. R. Eq. 124), an equity of redemption (*Eyre v. Saunders*, 5 Jur., N. S., 704). Lands equitably converted (*In re Green's Settled Estates*, 10 Jur., N. S., 1095) are settled estates where a discretion is given to the trustees as to the time of sale, and the rents of the property until sold, are directed to go by implication in the same way as the income of the property when sold (*In re Laing's Trusts*, 1 L. R. Eq. 417; *Re Chamberlain*, 23 W. R. 852). Interests arising by way of accruer are within the definition (*In re Goodwin's Settled Estates*, 3 Giff. 629). The Act does not apply to chattels (*D'Eyncourt v. Gregory*, 3 Ch. D. 636).

All estates or interests in remainder or reversion not disposed of by the settlement, and reverting to a settlor or descending to the heir of a testator, shall be deemed to be estates coming to such settlor or heir under or by virtue of the settlement.

This clause is a re-enactment verbatim of 21 & 22 Vict. c. 77, sec. 1.

In determining what are settled estates within the meaning of this Act, the Court shall be governed by the state of facts, and by the trusts or limitations of the settlement at the time of the said settlement taking effect.

This clause is a re-enactment verbatim of 27 & 28 Vict. c. 45, sec. 3, which was recited to have been

enacted to remove doubts then entertained as to whether, in the construction of the first section of the principal Act, "the Court was bound by the state of facts existing at the period of the settlement taking effect, or by the state of facts at the time of an application to the Court." under the Act (*Re Goodwin's Settled Estates*, 3 Giff. 620).

3. The expression "the Court" in this Act shall, so far as relates to estates in England, mean the High Court of Justice, and all causes and matters in respect of such estates commenced or continued under this Act shall, subject to the provisions of the Judicature Acts, be assigned to the Chancery Division of the High Court of Justice in like manner as if such causes and matters had arisen under an Act of Parliament by which, prior to the passing of the Judicature Acts, exclusive jurisdiction in respect to such causes and matters had been given to the Court of Chancery, or to any judges or judge thereof respectively.

Interpretation of "the Court."

The expression "the Court" in this Act shall, so far as relates to estates in Ireland, mean the Court of Chancery in Ireland.

Concurrent jurisdiction is by *section 44* given to the Court of Chancery of the County Palatine of Lancaster, and by *section 45* to the Landed Estates Court of Ireland.

The Act 40 & 41 Vict. c. 57 (*sec. 36*) has transferred to the Chancery Division of the High Court of Justice in Ireland the exclusive jurisdiction of the Court of Chancery and of the Landed Estates Court.

4. It shall be lawful for the Court, if it shall deem it proper and consistent with a due regard for the interests of all parties entitled under the settlement, and subject to the provisions and

Power to authorize leases of settled estates.

restrictions in this Act contained, to authorize leases of any settled estates, or of any rights or privileges over or affecting any settled estates, for any purpose whatsoever, whether involving waste or not, provided the following conditions be observed :

First. Every such lease shall be made to take effect in possession at or within one year next after the making thereof, and shall be for a term of years not exceeding—

For an agricultural or occupation lease, so far as relates to estates in England, twenty-one years, or so far as relates to estates in Ireland thirty-five years ;

And for a mining lease, or a lease of water mills, way leaves, water leaves, or other rights or easements, forty years ;

And for a repairing lease, sixty years ;

And for a building lease, ninety-nine years :

Provided always, that any such lease (except an agricultural lease) may be for such term of years as the Court shall direct, where the Court shall be satisfied that it is the usual custom of the district and beneficial to the inheritance to grant such a lease for a longer term than the term hereinbefore specified in that behalf.

This part of the fourth section consolidates 19 & 20 Vict. c. 120, sec. 2, with 21 & 22 Vict. c. 77, secs. 2 & 4, the only amendments being the enlargement of agricultural and occupation leases of estates in Ireland to 35 years, and the omission of leases of "water" before "water-mills" in the second clause of the subsection.

It is essential to adduce sufficient evidence that the proposed lease is proper and consistent with the interests of all parties, and to give in the affidavit the grounds for asserting it to be so (*Order 15*).

The Court authorized the granting of building leases of settled estates for 999 years, or at fee farm rent, upon evidence that according to the custom of the country this was the mode of disposing of the property for building purposes, and that it could not be beneficially disposed of for such purposes on any other terms (*Re Carr's Settled Estate*, 7 Jur., N. S., 1267). In *re Cross' Charity* (27 Beav. 592); proof was likewise given that it was customary in that district to grant building leases for 999 years, and the trustees of a 900 years' term were authorized to grant leases for terms not exceeding 600 years.

The Act cannot safely be resorted to for carrying into effect contracts made by a testator in his lifetime for granting leases which were not strictly in accordance with the provisions of the Act (*Cust v. Middleton*, 3 D. G. F. & J. 33).

A lease may be authorized upon the surrender of an existing lease, although an underlease granted by the surrendering lessee is unexpired, for the underlease by 4 Geo. II. c. 28, sec. 6, takes effect out of the new lease, which therefore "takes effect in possession" within the section (*Re Ford's Settled Estates*, 8 L. R. Eq. 309). But the Court has no power to grant a lease in reversion (*Re Henchy*, 3 Ir. Jur., N. S., 73).

The order of the Court granting leasing powers does not dispense with the necessity of a party who takes a lease investigating the title (*Re Henchy, ubi supra*).

This section "is not a general power given to the Court, which must necessarily therefore be exercised at the instance of some one, but it is a modified power subject to the restrictions and provisions of the Act" (per Jessel, M.R., in *Taylor v. Taylor*, 1 Ch. D. 432).

In *Re Duchess of Cleveland's Settled Estates* (22 W. R. 818) the Court refused to sanction a lease for 7 years of the mansion house and appurtenances, although the remainderman consented, and the tenant for life had not the means to keep it up.

When the estates are not limited "in succession" within the Settled Estates Act, an application may, if the lands belong to an infant, be made by petition under 11 Geo. IV. & 1 Will. IV. c. 65, sec. 17. This section enacts that, "Where any person being an infant under the age of 21 years, is and shall be seised or possessed of or entitled to any land in fee or in tail, or to any leasehold land, for an absolute interest, and it shall appear to the Court of Chancery to be for the benefit of such person that a lease or underlease should be made of such estates for terms of years for encouraging the erection of buildings thereon, or for repairing buildings actually being thereon, or the working of mines or otherwise improving the same, or for farming or other purposes, it shall be lawful for such infant, or his guardian in the name of such infant, by the direction of the Court of Chancery, to be signified by an order to be made in a summary way, upon the petition of such infant or his guardian, to make such lease of the land of such persons respectively or any part thereof, according to his or her interest therein respectively, and to the nature of the tenure of such estates respectively, for such term or terms of years, and subject to such rents and covenants, as the said Court of Chancery shall direct."

An order may be made under this section, though the limitation in fee in favour of the infant is defeasible on certain events happening (*Re Clark*, 1 L. R., C. A., 292); also, when the fee simple is subject to a life estate by the curtesy vested in the father (*Re Letchford*, 2 L. R., Ch. D., 719; *Re Spencer's Trust*, 16 W. R. 306). But see *Re Evans*, 2 M. & K. 318, and *Ex parte Legh*, 15 Sim. 445.

Secondly. On every such lease shall be reserved the best rent or reservation in the nature of rent, either uniform or not, that can be reasonably obtained, to be made payable half yearly or oftener without taking

any fine or other benefit in the nature of a fine : Provided always, that in the case of a mining lease, a repairing lease, or a building lease, a peppercorn rent or any smaller rent than the rent to be ultimately made payable may, if the Court shall think fit so to direct, be made payable during all or any part of the first five years of the term of the lease.

This portion of the fourth section follows in its first clause the corresponding portion of 19 & 20 Vict. c. 120, sec. 2, which, however, does not contain the proviso now appended.

Where a testator had entered into contracts for building leases, and had empowered the trustees of his will to grant similar leases to those he had granted, it was held that the contracts entered into by the testator not being identical with the terms prescribed by the Act, they could not be carried into effect under the Act, and that an application to Parliament was necessary (*Cust v. Middleton*, 3 De G. F. & J. 33 ; 30 L. J., Ch. 360 ; 7 Jur., N. S., 151 ; 3 L. T., N. S., 718). The contracts in this case provided for granting separate leases of the houses when built, apportioning the whole ground rent among some of them, and leaving the rest to be demised at a peppercorn rent.

In determining the question of the amount of rent to be required, the Court may take into consideration the value of a surrendered lease. It will "look to all the circumstances, and see that on the whole the best terms are made for the benefit of the persons interested under the settlement which can reasonably be had, whether by means of obtaining a surrender or otherwise" (*Re Rawlins' Estates*, 1 L. R. Eq. 287). See sec. 7, *post*.

As to what is meant by "best rent," see *post*, the notes to sec. 46.

Thirdly. Where the lease is of any earth, coal,

stone, or mineral, a certain portion of the whole rent or payment reserved shall be from time to time set aside and invested as hereinafter mentioned; namely, when and so long as the person for the time being entitled to the receipt of such rent is a person who by reason of his estate or by virtue of any declaration in the settlement is entitled to work such earth, coal, stone, or mineral for his own benefit, one fourth part of such rent, and otherwise three fourth parts thereof; and in every such lease sufficient provision shall be made to ensure such application of the aforesaid portion of the rent by the appointment of trustees or otherwise as the Court shall deem expedient.

This clause re-enacts verbatim the corresponding clause of 19 & 20 Vict. c. 120, sec. 2.

An order authorising a lease of mines was extended so as to give the lessees the use of contiguous lands by inserting the words "so much land as the trustees shall consider necessary for the convenient and effective working of the minerals" (*Re Reveley's Settled Estates*, 11 W. R. 744)—similarly the words were allowed to be added to an order—"and for the purpose of such leases to grant way leaves over any part of the said settled estates" (*Re Lord Wallace's Settled Estates*, W. N. 1869, p. 67).

"Where there are successive tenants for life without licence to commit waste, and a power to grant mining leases under this Act is obtained in the lifetime of the first tenant for life, the second tenant for life on coming into possession may, perhaps, contend that as it is not waste for a tenant for life to work mines which he finds open, he is entitled to take the three fourths of the rent. It is, however, to be expected that the Court would not allow such a construction to be put on the words of the section, and that it would be held that the mine was only

open for a special purpose—not so open as to entitle a tenant for life to work it for his own benefit should the lease be surrendered or otherwise become void " (*Brickdale*, p. 36).

Fourthly. No such lease shall authorize the felling of any trees except so far as shall be necessary for the purpose of clearing the ground for any buildings, excavations, or other works authorized by the lease.

A re-enactment verbatim of 19 & 20 Vict. 120, sec. 2, sub-s. 4.

Fifthly. Every such lease shall be by deed, and the lessee shall execute a counterpart thereof, and every such lease shall contain a condition for re-entry on non-payment of the rent for a period of twenty-eight days after it becomes due, or for some less period to be specified in that behalf.

The 5th sub-s. of 19 & 20 Vict. c. 120, sec. 2, closed with the words, "for a period not less than 28 days after it becomes due." With the exception of the amendment of these words the sub-section is re-enacted verbatim.

If no special conditions are deemed expedient, the order must direct that the lease shall contain such conditions as are required by the Act (*Order 25*).

5. Subject and in addition to the conditions hereinbefore mentioned, every such lease shall contain such covenants, conditions, and stipulations as the Court shall deem expedient with reference to the special circumstances of the demise. Leases may contain special covenants

A re-enactment verbatim of 19 & 20 Vict. c. 120, sec. 3.

Thus the Court will authorize leases on the terms of the lessees making roads (*Re Chambers*, 28 Beav. 653).

Under this section, the special covenants, conditions, and stipulations must be specified in the order, or the judge may direct the lease to contain such covenants, conditions, and stipulations, as may be approved by him at chambers (*Order 25*).

Parts of settled estates may be leased.

6. The power to authorize leases conferred by this Act shall extend to authorize leases either of the whole or any parts of the settled estates, and may be exercised from time to time.

19 & 20 Vict. c. 120, sec. 4, re-enacted verbatim.

Leases may be surrendered and renewed.

7. Any leases, whether granted in pursuance of this Act or otherwise, may be surrendered either for the purpose of obtaining a renewal of the same or not, and the power to authorize leases conferred by this Act shall extend to authorize new leases of the whole or any part of the hereditaments comprised in any surrendered lease.

This section consolidates 19 & 20 Vict. c. 120, sec. 5, and 21 & 22 Vict. c. 77, sec. 5.

A lease may be surrendered notwithstanding the existence of an unexpired underlease (*Re Ford's Settled Estates*, 8 L. R. Eq. 309), and the consideration for the surrender will be kept in view in settling the terms of the renewed lease (*Re Rawlins' Settled Estates*, 1 L. R. Eq. 286). See also *Sugden on Powers*, 8th ed. 787; *Davidson's Settlements*, p. 491.

The effect of this section would appear to be to include in every power of granting leases a power to accept a surrender "either for the purpose of obtaining a renewal of the same or not."

Power to authorize leases to

8. The power to authorize leases conferred by this Act shall extend to authorize preliminary

contracts to grant any such leases, and any of the terms of such contracts may be varied in the leases. extend to preliminary contracts

19 & 20 Vict. c. 120, sec. 6, re-enacted verbatim.

The power can, however, extend only to contracts which are in conformity with the provisions of the Act (*Curt v. Middleton*, 3 De G. F. & J. 33).

9. All the powers to authorize and to grant leases contained in this Act shall be deemed to include respectively powers to authorize the lords of settled manors, and powers to the lords of settled manors to give licences to their copyhold or customary tenants to grant leases of lands held by them of such manors to the same extent and for the same purposes as leases may be authorized or granted of freehold hereditaments under this Act. Powers of leasing to include powers to lords of settled manors to give licences to their copyhold or customary tenants to grant leases.

This section re-enacts 21 & 22 Vict. c. 77, sec. 3, and extends it by introducing the words, "powers to authorize the lords of settled manors."

Leases of copyhold or customary hereditaments can only be made without the consent of the lord when warranted by the custom of the manor, and when they do not prejudice or affect the rights of any lord of a manor (*section 56, post*).

10. The power to authorize leases conferred by this Act may be exercised by the Court either by approving of particular leases or by ordering that powers of leasing, in conformity with the provisions of this Act, shall be vested in trustees in manner hereinafter mentioned. Mode in which leases may be authorized.

19 & 20 Vict. c. 120, sec. 7, re-enacted verbatim.

Where the consent of all persons interested cannot be obtained, and some of the tenants in tail in remainder

are not *in esse*, the Court will not give a general power of leasing, but will sanction a particular lease upon a reference to chambers as to whether the provisional agreement comprises a fit and proper lease (*Re Hutchinson's Trust*, 12 Jur., N. S., 245).

What evidence to be produced on an application to authorize leases.

11. When application is made to the Court either to approve of a particular lease or to vest any powers of leasing in trustees, the Court shall require the applicant to produce such evidence as it shall deem sufficient to enable it to ascertain the nature, value, and circumstances of the estate, and the terms and conditions on which leases thereof ought to be authorized.

19 & 20 Vict. c. 120, sec. 8, re-enacted verbatim.

Besides this evidence, it is also necessary to bring forward the evidence required by *Orders* 15, 16, & 17, upon all petitions. See the Summary of the Practice, *post*.

After approval of a lease, Court to direct who shall be the lessor.

12. When a particular lease or contract for a lease has been approved by the Court, the Court shall direct what person or persons shall execute the same as lessor; and the lease or contract executed by such person or persons shall take effect in all respects as if he or they was or were at the time of the execution thereof absolutely entitled to the whole estate or interest which is bound by the settlement, and had immediately afterwards settled the same according to the settlement, and so as to operate (if necessary) by way of revocation and appointment of the use or otherwise, as the Court shall direct.

19 & 20 Vict. c. 120, sec. 9, re-enacted verbatim.

Compare this section with section 22. The latter is optional ("the Court *may*," etc.), this is imperative ("the Court *shall*," etc.). The latter contains these

words, "shall take effect as if the settlement had contained a power enabling such person or persons to effect such sale or dedication." These words correspond to those in the above section, "shall take effect in all respects as if he or they was or were at the time of the execution thereof, absolutely entitled to the whole estate or interest which is bound by the settlement, and had immediately afterwards settled the same according to the settlement." In other respects, the two sections follow the same wording.

13. Where the Court shall deem it expedient that any general powers of leasing any settled estates conformably to this Act should be vested in trustees, it may by order vest any such power accordingly, either in the existing trustees of the settlement or in any other persons, and such powers, when exercised by such trustees, shall take effect in all respects as if the power so vested in them had been originally contained in the settlement, and so as to operate (if necessary) by way of revocation and appointment of the use or otherwise, as the Court shall direct; and in every such case the Court, if it shall think fit, may impose any conditions as to consents or otherwise on the exercise of such power, and the Court may also authorize the insertion of provisions for the appointment of new trustees from time to time for the purpose of exercising such powers of leasing as aforesaid.

Powers of leasing may be vested in trustees.

19 & 20 Vict. c. 120, sec. 10, re-enacted verbatim.

The authority of the Court to vest such powers does not extend to cases where there exists some obstacle to its exercise, *e. g.*, the consent of some specified person being requisite and not having been obtained (*Re Hurle*, 2 H. & M. 196), or the fact of certain interested persons not being *in esse* (*Re Hutchinson's Trusts*, quoted in the note to section 10, *supra*).

A power to grant building leases for 600 years was ordered to be indorsed on a deed declaring the trusts of a dissenting chapel (*Re Cross' Charity*, 27 Beav. 592).

In *Re Green's Settled Estates* (10 Jur., N. S., 1098), a general power to grant mining leases was vested in trustees.

The powers once granted may subsequently be transferred upon application by petition (*Re Kentish Town Estates; Weeding v. Weeding*, 1 Johns. & Hem. 230), but quære, whether this could be done in the case of the first tenant for life being succeeded by an infant tenant in tail. In *Re Northey's Settled Estates (Brickdale*, 127), lands were subject to two settlements, the first limiting them to A. for life with remainder to B., the second made on the marriage of B., and the Court vested powers of granting building, mining, and repairing leases in the trustees of the first settlement during A.'s lifetime, and after A.'s death in the trustees of the second settlement.

In *Tolson v. Sheard* (5 Ch. D. 20), it was ordered that "powers of granting mining leases in conformity with the Settled Estates Acts, and subject to the provisions and restrictions therein contained, should vest in the trustees as the trustees of the will of the said testator, and in the survivors and survivor of them, and in the trustees or trustee for the time being, such powers to be exercised with the consent of the respective tenants for life (if any) for the time being in possession of the estates to which the respective mines might belong who might have attained the age of 21 years, or if there should be no such tenant for life, then without such consent."

See also *Re Jones' Settled Estates*, where the powers vested were very large (5 Jur., N. S., 138).

The power granted by the order should be indorsed on the instrument creating the settlement (*Re Chambers*, 28 Beav. 655; *Re Cross' Charity*, 27 Beav. 592). See section 33.

14. Provided always, that in orders under this Act for vesting any powers of leasing in any trustees or other persons, no conditions shall be inserted requiring that the leases thereby authorized should be submitted to or be settled by the Court or a judge thereof, or be made conformable with a model lease deposited in the judge's chambers, save only in any case in which the parties applying for the order may desire to have any such condition inserted, or in which it shall appear to the Court that there is some special reason rendering the insertion of such a condition necessary or expedient.

Conditions that leases be settled by the Court not to be inserted in orders made under this Act.

This section re-enacts sec. 1 of 27 & 28 Vict. c. 45, which Act, as stated in the preamble thereto, was passed to amend the principal Act, because "this introduction of such a condition had been found to occasion delay and expense, and so to create great difficulties in carrying into execution the objects of the Act, and such conditions might in general be safely omitted."

See *Re Dorning's Settled Estates* (14 W. R. 125), where an order was made authorising mining leases without inserting such a condition; and also *Re Jones' Settled Estates* (5 Jur., N. S., 138), where the Court dispensed with a reference to the conveyancing counsel, or an inquiry as to the propriety of the powers.

Before the passing of the Act, 27 & 28 Vict. c. 45, it had been the practice to insert in the order after the authority to grant leases the words: "but such preliminary contracts and leases are to be on such terms and conditions and stipulations as shall be approved by the judge" (*Re Chambers*, 28 Beav. 655), or words to that effect (*Re Hemingway*, 7 W. R. 279); and if a number of leases were to be granted of a similar nature, one draft was to be settled by the judge and taken as a model for the others (*Attorney-General v. Christ Church, Oxford*, 3 Giff. 521). The practice would then be to carry into chambers an affidavit by the surveyors

employed stating accurately the particulars of the proposed lease with regard to its terms, covenants, conditions, and stipulations, and to apply upon such affidavit for a certificate approving of these particulars (*Morgan*, p. 219).

In such special cases as are referred to in the section, the order authorizing the lease may direct the same to contain such covenants, conditions, and stipulations as may be approved by the judge at chambers without directing the lease to be settled by the judge (*Order* 25 ; and see the Summary of the Practice, *post*).

Conditions
where in-
serted may
be struck
out.

15. Provided also, that in all cases of orders (whether under this Act or under the corresponding enactment of the Acts hereby repealed) in which any such condition as last aforesaid shall have been inserted, it shall be lawful for any party interested to apply to the Court to alter and amend such order by striking out such condition, and the Court shall have full power to alter the same accordingly, and the order so altered shall have the same validity as if it had originally been made in its altered state ; but nothing herein contained shall make it obligatory on the Court to act under this provision in any case in which from the evidence which was before it when the order sought to be altered was made, or from any other evidence, it shall appear to the Court that there is any special reason why in the case in question such a condition is necessary or expedient.

27 & 28 Vict. c. 45, sec. 2, re-enacted and extended so as to apply to orders made before the coming into force of this Act, the original section having applied only to "orders already made" at the time of the passing of the Act of 1864.

The section was put into force in *Re Russell's Estates* (22 W. R. 399), though the Act came into operation only after the presentation of the petition.

In *Re Hoyle's Trusts* (10 Jur., N. S., 811; 12 W. R. 1125) such an order was made by substituting for the condition that the approbation of the judge in chambers would be required, the words, "The Lord Chancellor doth not think fit to insert a condition requiring the leases thereby authorized to be submitted to or settled by the Court or a judge thereof, or to be made conformable with a model lease deposited in a judge's chambers."

The application for amendment of the order by striking out the condition should be made by motion (see *Order 28*, retaining the old practice in cases not provided for by the Orders of 1878).

16. It shall be lawful for the Court, if it shall deem it proper and consistent with a due regard for the interests of all parties entitled under the settlement, and subject to the provisions and restrictions in this Act contained, from time to time to authorize a sale of the whole or any parts of any settled estates, or of any timber (not being ornamental timber) growing on any settled estates, and every such sale shall be conducted and confirmed in the same manner as by the rules and practice of the Court for the time being is or shall be required in the sale of lands sold under a decree of the Court.

Court may authorize sales of, settled estates and of timber.

19 & 20 Vict. c. 120, sec. 11, re-enacted.

The Court has jurisdiction to order a sale under the Act notwithstanding the existence of powers under which the proposed sale may be effected (*section 38*; and see *Re Thomson's Settled Estates*; *Green v. Thompson*, 1 Johns. 418, 5 Jur., N. S., 1343).

The Court would not, before the Act of 1876, sanction the sale of one part of a settled estate for the purpose of employing the produce of the sale in laying out roads in another part of the estate with a view to

granting building leases (*Re Chambers' Settled Estates*, 29 L. J. Ch. 924 ; 6 Jur., N. S., 1005 ; 3 L. T., N. S., 49 ; *Re Hurle's Settled Estates*, 2 H. & M. 202).

Whether the Court has jurisdiction to give to trustees powers of sale generally is doubtful. *Re Peacock's Settled Estates* (15 W. R. 100) is an authority against such jurisdiction, it being there held that the Court can only sanction such sales as shall be proved to be beneficial to the estate (S.c. 12 Jur., N. S., 959). On the other hand, in the recent case of *Re Andrews' Settled Estates* (26 W. R. 811 ; 38 L. T., N. S., 877), the Court sanctioned a sale generally, the trustees having, by virtue of the will creating the settlement, a power of sale exercisable after the death of the tenant for life and all the beneficiaries being petitioners.

The jurisdiction is ousted by the existence in the settlement of an express declaration against the exercise of such powers (*sec.* 38).

Copyholds which had under a mistaken idea of their tenure been contracted to be sold as freehold were ordered to be enfranchised before sale, and the whole to be sold as freehold, the costs of the enfranchisement to be paid out of the proceeds of sale (*Re Adair's Settled Estates*, 16 L. R. Eq. 124).

Shares which have vested absolutely, and are consequently not settled estates within the Act, may be included with the other shares in an order for sale comprising the whole estate upon the persons entitled to the former shares becoming co-petitioners (*Re Goodwin, Ex parte Butler*, 3 Giff. 620).

A sale of minerals may be directed apart from the surface of the land (*Re Mallin*, 3 Giff. 126 ; S.c. nom. *Re Law*, 7 Jur., N. S., 511 ; *Re Milward*, 6 L. R. Eq. 248). The form of the order in *Re Law* was, "Order that a contract for sale be carried into effect by a grant of the minerals, with a provision limiting the time within which the coal is to be worked out to within ten years."

The rules and practice of the Court with regard to

sales are at present regulated by Consolidated Order XXXV., rule 13 :

"When a decree or order is made, whether in Court or in Chambers, directing any property to be sold, unless otherwise ordered, the same shall be sold with the approbation of the judge to whose Court the cause or matter is attached, to the best purchaser that can be got for the same to be allowed by the judge, and all proper parties shall join in the sale and conveyance as the judge shall direct." See *Dart's Vendors and Purchasers*, Ch. XXI., 5th ed., p. 1190, *et seq.* *Seton on Decrees*, Vol. 2, Pt. 1, pp. 1391, *et seq.*

As a general rule, the sale is effected by public auction, but under special circumstances the Court may authorize a sale by private contract. Thus in *Re Adams' Settled Estates* (9 Ch. D. 116), an order was made for sale of the property out of Court where the land was to be sold for building purposes, and the delay consequent upon an order for sale by public auction would have been injurious. The form of the order was for sale by public auction or private contract, subject to a reserved price to be fixed in Chambers, the purchase-money to be brought into Court. (See *contra*, *Re Smith's Trusts*, W. N. 1878, p. 196.)

Although upon a sale of property held under one title in which an unborn class takes an interest, that property is to be sold under a very large number of lots, the Court will not, in order to save expense, order that the conveyance shall be settled in chambers "in case the parties differ," but will require that the order that the conveyance be settled in chambers shall be absolute in its terms (*Re Eyre's Estates*, 4 K. & J. 268; S.c. nom. *Eyre v. Sanders*, 31 L. T. Ch. 79). But in such a case there shall be only one reference of the title to the conveying counsel, and after one conveyance has been settled, all the others will be approved as a matter of course by the judge, unless some special circumstances intervene in any particular case (S.c.). The rule

is thus stated in the above case by Wood, V.-C: "The general rule of the Court is, that wherever infants are or may be interested, the conveyance must be settled by the conveyancing counsel of the Court. That rule is still more binding in a case of a sale under the Settled Estates Act, and where a sale is not contemplated by the person by whom the estate was settled." But see *Re Sheffield's Settled Estates* (W. N. 1876, p. 152).

There must be a reference to chambers to ascertain whether the contract for sale is a fit and proper contract, but a prospective order may be made directing that if it shall appear by the certificate that it is fit and proper, and for the benefit of all parties interested under the will, a conveyance may be made to that effect (*Re Hilton's Trusts*, 14 L. T., N. S., 129).

It is now necessary upon every petition to produce sufficient evidence that it is proper and consistent, with a due regard for the interests of all parties, that the powers should be exercised, and to state in the affidavit why and upon what ground it is deemed to be so (*Order* 15). This will in all cases, where the evidence produced is satisfactory, dispense with the necessity of a reference to chambers.

A detailed description of the property proposed to be dealt with must be contained in the body of the petition or in a schedule to it, or shown on a plan annexed to it (*Order* 2), and such description must, though it has to be scheduled to the petition on account of its great length, be contained in the order directing the sale (*Re Roper's Estate*, 2 N. R. 442).

The conduct of a sale directed by the Court is generally committed to the plaintiff. When it appears for the benefit of the parties it will be given to the defendant. But the right does not depend upon the extent of the interests of the parties in the property (*Knott v. Cottee*, 27 Beav. 33). When a sale is directed every party to the suit having title-deeds is bound to facilitate the sale (S.c.).

Exchanges can be effected under the Inclosure Acts ; for this reason no power to exchange is included in this section (*Brickdale*, p. 37).

By the Confirmation of Sales Act, 1862 (25 & 26 Vict. c. 108), sales made before the passing of that Act (7th of August, 1862), of land apart from minerals and not then impeached, were confirmed (sec. 1) ; and " trustees or other persons authorized to dispose of land by way of sale, exchange, partition, or enfranchisement," were enabled to apply to the Court by petition for its sanction of such sale (sec. 2). Under this Act the Court will give a general authority to effect such sales without reference to any particular contract (*Re Wynn*, L. R. 16 Eq. 237).

17. It shall be lawful for the Court, if it shall deem it proper and consistent with a due regard Proceedings for protection. for the interests of all parties who are or may hereafter be entitled under the settlement, and subject to the provisions and restrictions in this Act contained, to sanction any action, defence, petition to Parliament, parliamentary opposition, or other proceedings appearing to the Court necessary for the protection of any settled estate, and to order that all or any part of the costs and expenses in relation thereto be raised and paid by means of a sale or mortgage of or charge upon all or any part of the settled estate, or be raised and paid out of the rents and profits of the settled estate, or out of any moneys or investments representing moneys liable to be laid out, in the purchase of hereditaments to be settled in the same manner as the settled estate, or out of the income of such moneys or investments, or out of any accumulations of rents, profits or income.

This section is an entirely new enactment, which will prove, it is anticipated, one of considerable importance by relieving persons entitled to partial interests in

settled estates from the risk of having to bear personally a portion or the whole of the costs of proceedings for the protection of the inheritance. In future, persons coming within the words of section 23 will be able before commencing such proceedings to apply by petition for the sanction of the Court for them, and to obtain directions as to the mode in which the costs of such proceedings are to be raised. It remains to be seen what interpretation the Courts will place upon the word "protection," which is capable of wide extension, and might be made to cover opposition to Bills for compulsory powers, actions for the redemption of mortgages, or to restrain waste by a lessee, or for the specific performance of contracts relating to the settled property.

There are as yet no reported judicial decisions under this section.

The wording of the first portion of the section differs slightly from the corresponding portions of the 4th & 16th sections. In these occur the words "all parties entitled under the settlement," which in the above section are replaced by the words "all parties who are or may hereafter be entitled under the settlement."

The special provisions as to costs and expenses in this section, would seem in this respect to take proceedings for protection out of the general enactment as to costs (section 41).

Consideration for land sold for, building may be a fee-farm rent.

18. When any land is sold for building purposes it shall be lawful for the Court, if it shall see fit, to allow the whole or any part of the consideration to be a rent issuing out of such land, which may be secured and settled in such manner as the Court shall approve.

19 & 20 Vict. c. 120, sec. 12, re-enacted verbatim.

Minerals, &c., may be excepted from sale.

19. On any sale of land any earth, coal, stone, or mineral may be excepted, and any rights or privileges may be reserved, and the purchaser may be required to enter into any covenants or

submit to any restrictions which the Court may deem advisable.

19 & 20 Vict. c. 120, sec. 13, re-enacted verbatim.

The Act empowers the Court to authorize the sale and conveyance of minerals situate under a settled estate apart from the surface of the land (*Re Law*, 7 Jur., N. S., 511 ; *Re Mallin's Settled Estate*, 3 Giff. 126 ; 30 L. J. Ch. 929 ; 4 L. T., N. S., 435). The proper mode of carrying out the contract between the parties is by a sale, with a covenant limiting to ten years the period within which the mine is to be worked out, rather than by a demise of the minerals for ten years (*Re Mallin's Settled Estate*). The conveyance may grant rights of using the surface for the workings, and may reserve a rent in respect of the surface damaged from time to time (*Re Millward's Estate*, 6 L. R. Eq. 248).

20. It shall be lawful for the Court, if it shall deem it proper and consistent with a due regard for the interests of all parties entitled under the settlement, and subject to the provisions and restrictions in this Act contained, from time to time to direct that any part of any settled estates be laid out for streets, roads, paths, squares, gardens, or other open spaces, sewers, drains, or watercourses, either to be dedicated to the public or not ; and the Court may direct that the parts so laid out shall remain vested in the trustees of the settlement, or be conveyed to or vested in any other trustees upon such trusts for securing the continued appropriation thereof to the purposes aforesaid in all respects, and with such provisions for the appointment of new trustees when required, as by the Court shall be deemed advisable.

Court may authorize dedication of any part of settled estates for streets, roads, and other works.

19 & 20 Vict. c. 120, sec. 14, re-enacted.

The section does not warrant the Court to allow the

land to be cut up generally for roads, but only warrants it to sanction dedications of this kind in cases where there is an immediate benefit to the property in its state at the time of the application, *e.g.*, when houses are to be erected, when a new railway station is made in the neighbourhood, where roads are needed for the purposes of farming, or of access to a market (*Re Hurle's Settled Estates*, 2 H. & M. 203 ; *Re Chambers*, 28 Beav. 653). The roads need not be public roads, or even roads for all the tenants of the estate, since the general improvement of the estate may be promoted by private roads (*White v. Leeson*, 2 H. & N. 60).

As to the necessity of procuring the approval of the Court to plans of the proposed dedications, see *Re Hargreave's Settled Estates* (15 W. R. 54), where an order was made giving trustees general powers of granting building leases for 999 years, and of laying out portions of the same in accordance with the terms of the above section, without requiring plans to be submitted for approval.

The section does not mean that the Court may order roads and sewers to be made, but merely that the building plans sanctioned by the Court may include the construction of roads and sewers (*Re Venour's Settled Estates*, 2 Ch. D. 525).

As to laying out and making, and executing and maintaining streets, roads, and other works, and expenses thereof.

21. Where any part of any settled estates is directed to be laid out for such purposes as aforesaid, the Court may direct that any such streets, roads, paths, squares, gardens, or other open spaces, sewers, drains, or watercourses, including all necessary or proper fences, pavings, connections, and other works incidental thereto respectively, be made and executed, and that all or any part of the expenses in relation to such laying out and making and execution be raised and paid by means of a sale or mortgage of or charge upon all or any part of the settled estates, or be raised and paid out of the rents and profits

of the settled estates or any part thereof, or out of any moneys or investments representing moneys liable to be laid out in the purchase of hereditaments to be settled in the same manner as the settled estates, or out of the income of such moneys or investments, or out of any accumulations of rents, profits, or income; and the Court may also give such directions as it may deem advisable for any repair or maintenance of any such streets, roads, paths, squares, gardens, or other open spaces, sewers, drains, or watercourses, or other works, out of any such rents, profits, income, or accumulations during such period or periods of time as to the Court shall seem advisable.

This section re-enacts 39 & 40 Vict. c. 30, sec. 1 (which was passed to obviate the difficulty which had arisen under 19 & 20 Vict. c. 120, sec. 14, in the exercise of the power thereby created, "for want of sufficient power to direct the said streets and other works to be made and executed, and to provide for the expenses incurred in relation thereto"); and it extends that section so as (1) to enable the Court to provide for the payment of the expenses of the works out of income if it should be thought desirable; and (2) to enable the Court to provide for the maintenance of the works out of income. The difficulty referred to in the preamble of the Act of 1876 as having arisen was raised in the cases of *Re Chambers*, 28 Beav. 653; *Re Hurl's Settled Estates*, 2 H. & M. 196; and lastly in *Re Venour's Settled Estates*, 2 L. R. Ch. D. 525).

22. On every sale or dedication to be effected as hereinbefore mentioned the Court may direct what person or persons shall execute the deed of conveyance; and the deed executed by such person or persons shall take effect as if the settlement had contained a power enabling such

How sales and dedications are to be effected under the direction of the Court.

person or persons to effect such sale or dedication, and so as to operate (if necessary) by way of revocation and appointment of the use or otherwise, as the Court shall direct.

19 & 20 Vict. c. 120, sec. 15, re-enacted verbatim.

The meaning of the section must be that "the deed shall take effect as if the settlement had contained a power, and *such power was valid and subsisting* at the time of the execution of the deed. See *Brickdale* on the Settled Estates Act, p. 130. See *Re Thompson's Settled Estates*; *Green v. Thompson* (Johns. 420). The object of the Act is to supply a power of sale where the settlement does not contain one, and to provide that the money shall be applied as it would be applied under a proper power of sale (*Re Morgan's Settled Estates*, 9 L. R. Eq. 588). The order for sale binds all persons interested in the settled estates, and passes every estate and interest to which they are entitled under the settlement; therefore the parties authorized to make the conveyance can convey to the purchaser all that they are ordered to convey (*Eyre v. Sanders*, 7 W. R. 366); and in the case of an equity of redemption the right to call in the legal estate vests in the persons authorized to convey (S.c. 5 Jur., N. S., 704). Where a trustee, one of the conveying parties, dies after the hearing and before conveyance, a petition must be presented for the appointment of a new trustee in the place of the deceased trustee (*Scott v. Heisch*, 33 L. T. 498). But see *Re Hole's Trusts* (W. N. 1868, p. 70), where the M. R. refused to order one of eleven persons in whom the legal estate was vested to convey on behalf of all, saying that he had no power to make such order.

This section may be compared with the corresponding section relating to leases (*section 12*), from which it differs in the particulars before mentioned in the note to that section.

Application
by petition
to exercise

23. Any person entitled to the possession or to the receipt of the rents and profits of any

settled estates for a term of years determinable on his death, or for an estate for life or any greater estate, and also any person entitled to the possession or to the receipt of the rents and profits of any settled estates as the assignee of any person who but for such assignment would be entitled to such estates for a term of years determinable with any life, or for an estate for any life or any greater estate, may apply to the Court by petition in a summary way to exercise the powers conferred by this Act.

This section re-enacts 19 & 20 Vict. c. 120, sec. 16, and extends its provisions to assignees.

See *Orders 2 & 31* as to the form of the petition, the title and necessary clauses, also the Summary of the Practice.

It is not necessary that the proceedings under the Act should specify the particular settlement to which the property is at the time subject, provided the property be sufficiently identified, and be actually under settlement (*Re Thompson's Settled Estates*; *Green v. Thompson*, Johns. 418; 5 Jur., N. S., 1343).

The words "entitled to the possession or to the receipt of the rents and profits," have been discussed in the following cases, *Lord Scarsdale v. Curzon* (1 J. & H. 66), *Wolley v. Jenkins* (23 Beav. 60), and *Yellowly v. Gower* (11 Exch. 291). The same words occur in section 46.

Where mines were vested in trustees for a term of 21 years upon trust to work the mines and invest the profits, and hold them upon certain trusts, and subject to the term to hold them upon trusts corresponding to limitations of freehold estates under which A. was tenant for life with remainders over, A. presented a petition for sale, and it was held that the trustees must join as co-petitioners (*Ex parte Puxley*, 2 Ir. R. Eq. 237).

One of the parties having married after the presentation of the petition, the trustees of the settlement made

on the marriage, were made parties by amendment (*Re Wilkinson's Settled Estates*, 21 W. R. 537).

The Court cannot direct leases and sales in a cause without a petition (*Harvey v. Clarke*, 25 Beav. 7 ; *Taylor v. Taylor*, 1 Ch. D. 431). The petition must be presented by the person entitled to the possession of the estate or entitled to the receipt of the rents and profits. If there is no such person in existence, no application can be made, the above section being "the only enabling part which entitles the Court to set the Act in motion" (*S.c.*).

A petition was presented in *Williams v. Williams* (9 W. R. 888) by a widow entitled under the will to an estate during life *or widowhood*, and her children entitled in remainder ; the Court held these to be the proper parties to make the application.

No question of construction can be decided upon a petition under this Act, but where the Court sees that the right to the property can only be in the petitioners or one of them, an order for sale may be made, though it remain doubtful in what manner or proportions the right is vested (*Re Williams' Settled Estates*, 20 W. R. 967).

With whose
consent such
application
to be made.

24. Subject to the exceptions hereinafter contained, every application to the Court must be made with the concurrence or consent of the following parties ; namely,

Where there is a tenant-in-tail under the settlement in existence and of full age, then the parties to concur or consent shall be such tenant-in-tail, or if there is more than one such tenant-in-tail, then the first of such tenants-in-tail, and all persons in existence having any beneficial estate or interest under or by virtue of the settlement prior to the estate of such tenant-in-tail, and all trustees having any estate or

interest on behalf of any unborn child prior to the estate of such tenant-in-tail ;

And in every other case the parties to concur or consent shall be all the persons in existence having any beneficial estate or interest under or by virtue of the settlement, and also all trustees having any estate or interest on behalf of any unborn child.

19 & 20 Vict. c. 120, sec. 17, re-enacted verbatim.

After an order for sale has been made, it is not necessary upon a petition for a supplemental order to have the consent of all the *cestuis que trusts*, but the consent of trustees who have power to receive and give discharges is sufficient (*Eyre v. Sanders*, 4 Jur., N. S., 830).

All persons beneficially interested must concur (*Grey v. Jenkins*, 26 Beav. 351). Trustees can only consent for unborn children ; but trustees with a power of sale may join in a sale which will bind all persons claiming under their trust, (*S.c.*). An infant remainderman is bound to appear on each of two petitions by a guardian *ad litem*, appointed for the purpose (*Re the Duke of Cleveland's Harte Estates*, 2 L. T., N. S., 78).

The words "every application," refer only to applications under the Act, and not to petitions dealing with purchase-money (*S.c.*, 1 Dr. & Sm. 481 ; 30 L. J. Ch. 862 ; *Re Seaton Barnes' Settled Estates*, 10 W. R. 416).

The operation of the Act is not hindered by the fact that the limitations of the settlement contemplate the possibility of persons not presently in existence becoming ultimately entitled in remainder ; therefore the impossibility of obtaining the concurrence of persons unascertained who may take a contingent interest is not a valid objection to the exercise of the powers given by the Act (*Beioley v. Carter*, 4 L. R. C. A. 230). Where the tenant for life of the settled estate and the trustees of the legal fee, who were the only persons in existence who had any estate or interest in the property at the date of the order, concurred, it was held that this was sufficient,

and that the consent of the heir-at-law of the tenant for life was not requisite (*S.c.*). With the exceptions hereinafter contained (*secs.* 25 and 28), the Court cannot exercise the powers given by this Act if any of the parties beneficially interested refuse to concur (*Re Merry's Settled Estates*, 15 W. R. 307).

The concurrence of *cestuis que trusts* of a term for raising portions is not superseded by the concurrence of their trustees, although these have powers of sale and of giving receipts for the purchase-money (*Re Boughton*, 12 W. R. 34). Therefore remaindermen who are *sui juris*, and who may become beneficially interested, must be served as well as the trustees, but service on their infant children who might in certain events take by substitution their parents' shares, may be dispensed with (*Re Chamberlain*, 23 W. R. 852). The words used in the section, "any beneficial estate or interest," are of the widest, and the use of the word "interest" shows that the consent is required not only of persons who have an "estate," *e.g.*, trustees for sale, but also those who have a beneficial "interest," *e.g.*, the *cestuis que trusts* under a trust for sale, or persons entitled to a portion charged upon an estate. The fact that the statute provides that the trustees shall consent for an unborn child, implies that they are not to consent for a born child (*Re Ives-Bailey v. Holmes*, 3 Ch. D. 690; 24 W. R. 1068). Trustees are not the persons to represent children who are beneficiaries, even if their interest is one in possession within the meaning of the Act (*Re Dendy*, 4 Ch. D. 879).

A contrary opinion was entertained in the cases of *Re Potts' Estate*, 16 L. R. Eq. 631 n., 15 W. R. 29, and *Re Strutt's Trusts*, 16 L. R. Eq. 629, and it has recently been decided that in an action for sale and partition trustees for sale sufficiently represent their *cestuis que trusts* (*Stace v. Gage*, 8 Ch. D. 451), and that Order XVI. rule 7 of the Rules of Court, 1875, under the Judicature Acts applies to such an action (*Simpson v. Denny*, 10 Ch. D. 28).

Notice of any application must be served on all trustees (*sec.* 30), and evidence of such service produced at the hearing (*Order* 16).

25. Provided always, that where an infant is tenant-in-tail under the settlement, it shall be lawful for the Court, if it shall think fit, to dispense with the concurrence or consent of the person, if only one, or all or any of the persons, if more than one, entitled, whether beneficially or otherwise, to any estate or interest subsequent to the estate tail of such infant.

Court may dispense with consent in respect of certain estates.

This section is new.

The obtaining of the consent of an infant tenant-in-tail through his guardian is provided for by *Orders* 6, 7, 9, and 11. See the Summary of Practice, *post*.

The guardian having in this case to obtain the special direction of the Court before making any application or giving any consent, notice or notification (*sec.* 49), there are good reasons why the consent of the persons more remotely interested may in such cases as the above be dispensed with without endangering their interests.

26. Provided always, that where on an application under this Act the concurrence or consent of any such person as aforesaid shall not have been obtained, notice shall be given to such person in such manner as the Court to which the application shall be made shall direct, requiring him to notify within a time to be specified in such notice whether he assents to or dissents from such application, or submits his rights or interests so far as they may be affected by such application to be dealt with by the Court, and every such notice shall specify to whom and in what manner such notification is to be delivered or left. In case no notification shall be delivered or left in accordance with the

Notice to be given to persons who do not consent to or concur in the application.

notice and within the time thereby limited, the person to or for whom such notice shall have been given or left shall be deemed to have submitted his rights and interests to be dealt with by the Court.

37 & 38 Vict. c. 33, sec. 2, re-enacted.

The practice under this section is regulated by Orders 4 and 22. See the Summary of the Practice, *post*.

Under Order 4 the manner of service is subject to the directions of the judge in the following cases :—

1. Where the person to be served is of unsound mind not so found by inquisition—in a recent case service was ordered to be effected by serving the notice personally on the persons of unsound mind, and leaving other copies of the notice with the persons in whose charge they were (*In re Crabtree's Settled Estates*, 10 L. R. C. A. 203).

2. Where the person is out of the jurisdiction—in a case of this kind, where a married woman was resident in New Zealand, the Court ordered service of the notice by letter sent through the post and addressed to her place of residence (*Re Rylar*, 24 W. R. 949).

3. Where special circumstances of the case require a mode of service other than the ordinary one—see *Re Stark's Settled Estates* (W. N. 1875, p. 224), as to service on a person of extreme old age unable to concur in writing.

Court may dispense with notice under certain circumstances.

27. Provided also, that where on an application under this Act the concurrence or consent of any such person as aforesaid shall not have been obtained, and in case such person cannot be found, or in case it shall be uncertain whether he be living or dead, or in case it shall appear to the Court that such notice as aforesaid cannot be given to such person without expense disproportionate to the value of the subject-matter of the application, then and in

any such case the Court, if it shall think fit, either on the ground of the rights or interests of such person being small or remote, or being similar to the rights or interests of any other person or persons, or on any other ground, may by order dispense with notice to such person, and such person shall thereupon be deemed to have submitted his rights and interests to be dealt with by the Court.

This section is new, and enables the Court to dispense with notice in cases where a person required to be served with notice under *sec.* 26 cannot conveniently be served, owing to one or other of the following circumstances—viz., if either he

1. Cannot be found ;
- or 2. Is not known to be living ;
- or 3. Cannot be served without disproportionate expense.

But it would seem to be necessary that in addition to one or other of the foregoing circumstances there must also exist one or other of the following “grounds” :

1. Smallness or remoteness of his interest ;
- or 2. Similarity of interest to that of other parties already before the Court ;
- or 3, “Any other ground” (which would probably be read as meaning “any other *similar* ground”).

Service was dispensed with on the husbands and children of married women whose examinations were dispensed with under section 50 on the ground of remoteness of interest (*Re Earl of Kilmorey's Settled Estates*, 26 W. R. 54).

See also *Stace v. Gage* and *Simpson v. Denny*, cited in the note to section 24, and compare the 3rd section of the Partition Act, 1876, the provisions of which are similar to those of the above section.

28. An order may be made upon any applica- Court may

dispense
with
consent,
having re-
gard to the
number and
interests of
parties.

tion notwithstanding that the concurrence or consent of any such person as aforesaid shall not have been obtained or shall have been refused, but the Court in considering the application shall have regard to the number of persons who concur in or consent to the application, and who dissent therefrom or who submit or are to be deemed to submit their rights or interests to be dealt with by the Court, and to the estates or interests which such persons respectively have or claim to have in the estate as to which such application is made; and every order of the Court made upon such application shall have the same effect as if all such persons had been consenting parties thereto.

37 & 38 Vict. c. 33, sec. 3, re-enacted.

The discretion given by this section is one to be exercised having regard to two sets of circumstances, namely, "number and value." The meaning is not that the Court should decide simply according to its own notion of what would be best to be done with the property. It is only in cases of comparatively unimportant persons—*i.e.*, unimportant as regards value in the estate—dissenting that the Court ought to exercise the power given by the section (per Jessel, M. R., in *Taylor v. Taylor*, 1 Ch. D. 433). Where the persons interested are equal in number, or where the values of the interest approach closely, the opposition of persons so interested is fatal to the application (*S. c.*, 3 Ch. D. 146, per James, L. J.).

Service of notice was not required on an infant born after the presentation of the petition where the mother (a married woman) and her other children and the trustees were the petitioners (*Re Lewis' Settled Estates*, 24 W. R. 103).

This section must be read in conjunction with *section* 26, which requires notice (*Re Rylar*, 24 W. R. 949);

therefore notice must be served on all parties interested, unless specially dispensed with under section 27.

Out of eight persons interested in settled property seven consented, and the consent of the eighth, who was a married woman, was dispensed with on the terms of the petition being served on her and her husband (*Re Thorp's Settled Estates*, W. N., 1876, p. 251).

In *Re Spurnay's Settled Estates* (W. N., 1878, p. 238), the Court disregarded as too remote the interest of a person entitled to a remainder in the event of all the children of the testator dying under 21 without leaving issue.

See also *Re Cundee's Settled Estates* (37 L. T., N. S., 271; W. N., 1877, p. 184), where the concurrence of the widow of a deceased son and her second husband, she having married again, and being entitled under her first husband's settlement to a life interest in one-tenth of the settled estates, was dispensed with.

And see *Re Hooke's Estate* (W. N., 1875, p. 29), where the petitioners being the tenant for life and the first tenants in tail, who were infants, the service of notice on the remaindermen was dispensed with.

29. Provided nevertheless, that it shall be lawful for the Court, if it shall think fit, to give effect to any petition subject to and so as not to affect the rights, estate, or interest of any person whose concurrence or consent has been refused, or who has not submitted or is not deemed to have submitted his rights or interests to be dealt with by the Court, or whose rights, estate, or interest ought in the opinion of the Court to be excepted.

Petition may be granted without consent, saving rights of non-consenting parties.

Sec. 18 of 19 & 20 Vict. c. 120, of which the present section is a re-enactment, was not applicable if "there should be a person entitled to an estate of inheritance whose consent or concurrence should have been refused

or could not be obtained." This restriction is now removed, and the provisions of the section extended so as to cover cases where persons interested do *not* submit their rights (under *sec. 26*) to be dealt with by the Court.

Where there are a number of persons having charges upon the settled estates as legatees, and it is almost impossible from their number to serve them with notice of the petition, the power given to the Court by this section will be used (*Re Legge's Settled Estates*, 6 W. R. 20; *In re Parry's Will*, 34 Beav. 642). The order will follow the words of the section in saving the rights of persons unrepresented.

Notice of application to be served on all trustees, &c.

30. Notice of any application to the Court under this Act shall be served on all trustees who are seised or possessed of any estate in trust for any person whose consent or concurrence to or in the application is hereby required, and on any other parties who in the opinion of the Court ought to be so served, unless the Court shall think fit to dispense with such notice.

19 & 20 Vict. c. 120, sec. 19, re-enacted verbatim.

Evidence of service on trustees under this section must be produced on the hearing of the petition (*Order 16*).

If there are "any other parties who in the opinion of the Court ought to be served," the petition stands over generally, or to such time as the Court shall direct (*Order 18*).

Trustees served with notice under this section have a right to inspect and peruse the petition without payment of any fee, and to have a copy of the petition on the usual charge (*Order 22*).

Notice of application to be given in newspapers if

31. Notice of any application to the Court under this Act shall, *if the Court shall so direct, but not otherwise*, be inserted in such newspapers

as the Court shall direct, and any person or body corporate, whether interested in the estate or not, may apply to the Court by motion for leave to be heard in opposition to or in support of any application which may be made to the Court under this Act; and the Court is hereby authorised to permit such person or corporation to appear and be heard in opposition to or support of any such application, on such terms as to costs or otherwise, and in such manner as it shall think fit.

The difference between this section and sec. 20 of 19 & 20 Vict. c. 120, lies in this, that the direction of the Court is now necessary before giving notice. In other respects the latter section is here re-enacted.

The effect of this amendment is, that no advertisements are now required before the hearing, though upon the hearing the Court may direct them; in which case the petition stands over generally, or to such time as the Court may direct (*Order 18*).

The practice on motions for leave to be heard is regulated by Orders 19 & 20.

In a case in which the parties themselves are the only persons interested, and the public can have no concern in the matter, there is no reason whatever for issuing advertisements (*In re Chilcott's Estate*, W. N., 1877, p. 259). In this case the V.-C. Malins expressed his opinion that the above section was a salutary provision, and added that it would be a very extraordinary case which would induce him to require advertisements to be issued.

See generally, as to the practice on issuing advertisements and on motions for leave to be heard, the Summary of the Practice, and the Notes to the Orders, *post*.

32. The Court shall not be at liberty to grant No application under this Act to any application under this Act in any case

be granted where a similar application has been rejected by Parliament.

where the applicant, or any party entitled, has previously applied to either House of Parliament for a private Act to effect the same or a similar object, and such application has been rejected on its merits, or reported against by the judges to whom the Bill may have been referred.

19 & 20 Vict. c. 120, sec. 21, re-enacted verbatim.

Evidence to the effect of this section must be produced upon the hearing of the petition (*Order* 17).

A Bill introduced into either House of Parliament and rejected will be presumed to have been rejected on its merits within this section unless the contrary appear (*Re Wilson's Estate Bill*, 1 L. T., N. S., 25).

Notice of the exercise of powers to be given as directed by the Court.

33. The Court shall direct that some sufficient notice of any exercise of any of the powers conferred on it by this Act shall be placed on the settlement or on any copies thereof, or otherwise recorded in any way it may think proper, in all cases where it shall appear to the Court to be practicable and expedient for preventing fraud or mistake.

19 & 20 Vict. c. 120, sec. 22, re-enacted verbatim.

Notice may be given under this section by registering a memorial in a register county or district. If the Court dispenses with notice under this section, the order must expressly say so (*Order* 23).

In *Re Cross' Charity* (27 Beav. 292), a power to grant building leases for 600 years was ordered to be indorsed on a deed declaring the trusts of a dissenting chapel.

In *Re Burley's Settled Estates* (W. N., 1868, p. 148), where the probate of the will by which the estates referred to in the petition were settled had been lost, notice of the order was directed to be indorsed on a deed appointing new trustees.

34. All money to be received on any sale effected under the authority of this Act, or to be set aside out of the rent or payments reserved on any lease of earth, coal, stone, or minerals as aforesaid, may, if the Court shall think fit, be paid to any trustees of whom it shall approve, or otherwise the same, so far as relates to estates in England, shall be paid into Court *ex parte* the applicant in the matter of this Act, and so far as relates to estates in Ireland, shall be paid into the Bank of Ireland to the account of the Accountant-General *ex parte* the applicant in the matter of this Act; and such money shall be applied as the Court shall from time to time direct to some one or more of the following purposes, namely,—

Payment and application of moneys arising from sales or set aside out of rent, &c., reserved on mining leases.

So far as relates to estates in England the purchase or redemption of the land tax, and so far as relates to estates in Ireland the purchase or redemption of rentcharge in lieu of tithes, crown rent, or quit rent.

The discharge or redemption of any incumbrance affecting the hereditaments in respect of which such money was paid, or affecting any other hereditaments subject to the same uses or trusts; or

The purchase of other hereditaments to be settled in the same manner as the hereditaments in respect of which the money was paid; or

The payment to any person becoming absolutely entitled.

This section substantially re-enacts sec. 23 of 19 & 20 Vict. c. 120: the distinction made between estates in England and estates in Ireland in the first head of the purposes enumerated is however new.

The object of this Act being to supply a proper power of sale where the settlement does not contain one, and

to provide that the money shall be applied as it would be applied under a proper power of sale, the purchase-money may be paid to the trustees to be held upon the trusts of the settlement (*Re Morgan's Settled Estates*, 9 L. R. Eq. 587; *Re Helmsley*, 43 L. J. Ch. 72). This, however, will not be done where some of the *cestuis que trusts* are resident abroad (*Aston v. Meredith*, 13 L. R. Eq. 292).

For the purposes of this section the erection of a building is substantially the same thing as the purchase of a new estate, and therefore the proceeds of sale may be applied in building hop-kilns, a granary, or cottages, or in repairs and alterations which will permanently increase the value of the estate (*Re Newman's Settled Estates*, 9 L. R., C. A., 681, and the cases there cited; *Re Johnson*, 8 L. R. Eq. 348), and which will put new buildings on the ground (*Drake v. Trefusis*, 10 L. R., C. A., 367; *Re Speer's Trusts*, 3 Ch. D. 262). But money in Court cannot be applied in making roads and drains, under sec. 20 (*Re Venour's Settled Estates; Venour v. Sellon*, 2 Ch. D. 522), though it may be advanced on the security of a mortgage by the petitioners of their interests in the settled estates (*S.c.*). If, however, there are "any moneys or investments representing moneys liable to be laid out in the purchase of hereditaments to be settled in the same manner as the settled estates" (*section 21*), streets, roads, drains, &c., may be constructed and paid for out of such moneys or investments or out of the income arising from them.

Assessments made by a corporation for paving a street are an incumbrance within this section (*Re Hiliard's Settled Estates*, 38 L. T., N. S., 93).

Before payment out of Court to a tenant-in-tail under a settlement, he must execute a disentailing deed (*Re Broadwood's Settled Estates*, 1 Ch. D. 438; *contra, Re Wood's Settled Estates*, 20 L. R. Eq. 372), and make an affidavit of no incumbrances (*Thornhill v. Milbank*, 12 W. R. 523). The conflicting decisions of *Re Broadwood's Settled Estates*, and *Re Wood's Settled Estates*,

were brought before the Court of Appeal in *Re Reynolds* (3 Ch. D. 61), and the judges of this Court, holding themselves bound by a previous decision of Lord Selborne, required the production of a proper deed enlarging the base fee.

Where the settlement contained an ultimate remainder to the survivor of the husband and wife, and the wife was proved to be past child-bearing, the purchase-money was ordered to be paid out to the husband and wife on the wife executing a deed under the 77th section of the Fines and Recoveries Act (*Re Belt's Settled Estates*, 25 W. R. 901).

An application having for its object the dealing with purchase-moneys does not come within section 24, and notice of such application need not be served upon all the persons named in that section (*Re the Duke of Cleveland's Harte Estates*, 1 Dr. & Sm. 481; 7 Jur., N. S., 769). In this case service on the tenant for life and remainderman was held sufficient. In *Re the Bolton Estates Act*, 1863 (19 W. R. 429), service was ordered on the different persons interested under the settlement down to the first tenant-in-tail. In *Re the Sexton Barnes' Settled Estates* (10 W. R. 416), the notices required by 19 & 20 Vict. c. 120, sec. 20 (see *ante*, sec. 31), were dispensed with, the petitioner being both tenant for life and heir-at-law of the last surviving trustee.

This section is analogous to the 69th sec. of the Lands Clauses Consolidation Act, 1845 (*q.v.*), and the decisions under it may be applied by analogy to cases under the above section. The following have been held to be proper modes of applying money paid into Court:—Enfranchisements of copyholds (*Dickson v. Jackson*, 25 L. J. Ch. 588; *Re Cheshunt College*, 3 W. R. 638); purchasing a lessee's interest (*Ex parte the Corporation of London*, 5 L. R. Eq. 418); repaying a tenant for life moneys expended by him which are a charge on the inheritance (*Re Leigh's Estate*, 6 L. R., C. A., 887); buying up a lease of other land (*Ex parte the Bishop of*

London, 2 De G. F. & J. 14); or the reversion in fee of leaseholds belonging to the same parties (*Re Brasher's Trusts*, 6 W. R. 406).

The application of the principles of the Lands Clauses Consolidation Act to the Settled Estates Act in the matter of dealings with the purchase-money has been extended by the introduction into this Act of the 74th section of the Lands Clauses Consolidation Act (see *post*, sec. 37).

The proceeds of sale must be treated as realty, there being an equity in favour of the heir for reconversion provided by the above and the two next succeeding sections (*Foster v. Foster*, 1 Ch. D. 588; *Mildmay v. Quicke*, 6 Ch. D. 553). And see *Kelland v. Telford* (6 Ch. D. 491), which was a decision under section 69 of the Lands Clauses Consolidation Act.

Trustees
may apply
moneys in
certain cases
without
application
to Court.

35. The application of the money in manner aforesaid may, if the Court shall so direct, be made by the trustees (if any) without any application to the Court, or otherwise upon an order of the Court upon the petition of the person who would be entitled to the possession of the receipt of the rents and profits of the land if the money had been invested in the purchase of land.

19 & 20 Vict. c. 120, sec. 24, re-enacted verbatim.

Upon a petition for sale the form of the order is to carry out the contracts if the trustees can satisfy the Court that they are beneficial, with a direction to apply the proceeds without any further application to the Court (*Re Peacock's Settled Estates*, 12 Jur., N. S., 959).

Orders have been made for the payment of the purchase-money to trustees to hold upon the trusts of the settlement (*Re Morgan's Settled Estates*, 9 L. R. Eq. 587; *Re Shaw's Settled Estates*, 14 L. R. Eq. 9), or upon their undertaking to apply it in payment of the cost of erecting buildings on the settled estate (*Re Newman's Settled Estates*, 9 L. R., Ch. A., 681).

In other cases under the last clause of this section the person to make the application is identical with the original petitioner.

See *Re Hemsley's Settled Estates* (43 L. J. Ch. 72), where the proceeds of a sale were ordered to be paid to trustees, and *Re Boyd's Trusts* (8 Ir. R. Eq. 76), where powers of applying the moneys were vested in trustees. The order made in the latter case is given in the Appendix, *post*.

36. Until the money can be applied as afore-
 said, the same shall be invested as the Court
 shall direct in some or one of the investments in
 which cash under the control of the Court is for
 the time being authorized to be invested, and the
 interest and dividends of such investments shall
 be paid to the person who would have been en-
 titled to the rents and profits of the lands if the
 money had been invested in the purchase of
 land.

Until money
 can be ap-
 plied to be
 invested,
 and divi-
 dends to
 be paid to
 parties
 entitled.

This section re-enacts 19 & 20 Vict. c. 120, sec. 25, but extends the latter, which restricted the investments to exchequer bills and consols, so as to enable moneys to be invested in any of the investments in which cash under the control of the Court may be invested.

The General Order, 1st February, 1861, made under sec. 10 of Lord St. Leonards' Act, provides :

1. "Cash under the control of the Court may be invested in Bank Stock, East India Stock, Exchequer Bills, and 2*l.* 10*s.* per Cent. Annuities ; and upon mortgage of freehold and copyhold estates respectively in England and Wales, as well as in Consolidated 3*l.* per Cent. Annuities, and New 3*l.* per Cent. Annuities.
2. "Every petition for the purpose of the conversion of any 3*l.* per Cent. Bank Annuities into any other of the stocks, funds, or securities hereinbefore mentioned, shall be served upon the

trustees (if any) of such Bank 3l. per Cent. Annuities, and upon such other persons, if any, as the Court shall think fit."

Upon the petition of the tenant for life, with the consent of the tenant in tail, purchase-money was allowed to be invested on mortgage (*Wall v. Hall*, 8 L. T., N. S., 44).

The practice of the Paymaster-General's office is that with the order directing the investment, the solicitor, if he desires an investment, should leave a written request to invest (*Re Woodcock's Settled Estate*, 13 L. R. Eq. 183).

Where the original order directing payment of the income on a fund in Court to a tenant for life was lost, the Record Office was directed to issue a new office copy of the order (*Scott v. Heisch*, 33 L. T. 498).

Court may direct application of money in respect of leases or reversions as may appear just.

37. Where any purchase-money paid into Court under the provisions of this Act shall have been paid in respect of any lease for a life or lives or years, or for a life or lives and years, or any estate in lands less than the whole fee simple thereof, or of any reversion dependent on any such lease or estate, it shall be lawful for the Court on the petition of any party interested in such money to order that the same shall be laid out, invested, accumulated, and paid in such manner as the said Court may consider will give to the parties interested in such money the same benefit therefrom as they might lawfully have had from the lease, estate, or reversion in respect of which such money shall have been paid, or as near thereto as may be.

This section is new, and follows with merely verbal alterations, the 74th section of the Lands Clauses Consolidation Act, 1845. The effect of the amendment is to enable the Court at its discretion to apply to matters arising out of this Act the principles of apportionment,

which obtain under the Lands Clauses Consolidation Act, whether as between tenants for life and remaindermen, or as between termors and reversioners, or as between lessors and lessees.

38. The Court shall be at liberty to exercise any of the powers conferred on it by this Act, whether the Court shall have already exercised any of the powers conferred by this Act in respect of the same property or not; but no such powers shall be exercised if an express declaration that they shall not be exercised is contained in the settlement: Provided always, that the circumstance of the settlement containing powers to effect similar purposes shall not preclude the Court from exercising any of the powers conferred by this Act, if it shall think that the powers contained in the settlement ought to be extended.

Court may exercise powers repeatedly, but may not exercise them if expressly negatived.

Sec. 26 of 19 & 20 Vict. c. 120, of which the above is otherwise a re-enactment, excluded the exercise of the powers conferred by the Act, where a "manifest intention" against their exercise might be "reasonably inferred" from the settlement, "or from extrinsic circumstances or evidence." Under the section as it now stands an "express declaration" can alone be looked to.

In *Re Thompson's Settled Estates—Green v. Thompson* (Johns. 418, 423; 5 Jur., N. S., 1343), where the original settlement gave to the trustees a power of sale, and four undivided fifths of the settled estate had been resettled with powers of sale vested in the trustees, it was argued that the Court had no jurisdiction under the Act where there were subsisting powers under which the property could be sold. But Wood, V.-C., held that inasmuch as a sale under the Act might, in many cases, be preferable to a sale under the power contained in a settlement, and as the insertion into the settlement of a power is not indicative of an intention that the powers

conferred by the Act shall not be exercised, the Court is at liberty to direct a sale under the Act, even when the powers of the settlement are sufficient for the purpose without any extension.

In *Grey v. Jenkins* (26 Beav. 351), the trustees of the settlement had a general power of sale, and in *Re Morgan's Settled Estates* (9 L. R. Eq. 587), where the trustees had a power of sale upon the death of the tenant for life, the power was accelerated so as to be immediately exercisable.

Where a testator by his will gave to the tenant for life of his real estate a power to grant building leases, but only with the consent in writing of his (the testator's) widow, the Court refused to extend this power by dispensing with the required consent (*Re Hurle's Settled Estates*, 2 H. & M. 196).

In *Re Williams' Settled Estates* (W. N. 1878, p. 189), the testator had given a power of sale to trustees to be exercised on the death of the survivor of two persons, with a direction that the power should not be exercised before that event. This was held not to amount to an "express declaration" that the powers of the Act should not be exercised, and the sale was ordered to be effected.

A power contained in the settlement, but not immediately exercisable, may be accelerated (*Re Hemsley's Settled Estates*, 43 L. J. Ch. 72).

Court not to authorize any act which could not have been authorized by the settlor.

39. Nothing in this Act shall be construed to empower the Court to authorize any lease, sale, or other act beyond the extent to which in the opinion of the Court the same might have been authorized in and by the settlement by the settlor or settlors.

Sec. 27 of 19 & 20 Vict. c. 120, re-enacted verbatim.

Acts of the Court in professed

40. After the completion of any lease or sale, or other act under the authority of the Court,

and purporting to be in pursuance of this Act, the same shall not be invalidated on the ground that the Court was not hereby empowered to authorize the same, except that no such lease, sale, or other act shall have any effect against such person as herein mentioned whose concurrence or consent ought to be obtained, or who ought to be served with notice, or in respect of whom an order dispensing with such service ought to be obtained in the case where such concurrence or consent has not been obtained and such service has not been made or dispensed with.

pursuance
of this Act
not to be
invalidated.

This section extends sec. 28 of 19 & 20 Vict. c. 120, so as to include cases where service has not been made or dispensed with.

Conveyances under the Act when completed will give an indefeasible title, notwithstanding any excess of jurisdiction (*Re Thompson's Settled Estates—Green v. Thompson*, Johns., 418; 5 Jur., N. S., 1343). This section puts a sale under the Settled Estates Act in the same position as that in which sales made under the ordinary authority of the Court have been held to be (*Beioley v. Carter*, 4 L. R. C. A. 238). If all persons interested are before the Court, mere irregularity will not avail to invalidate the order, but if the proper persons are not present the order may be objected to (*Lloyd v. Johnes*, 9 Ves. 37). The purchaser will not lose the benefit of his purchase by reason of an irregularity in the proceedings: *e.g.*, the omission by the Court to take accounts or direct inquiries which ought to have been taken and directed—or again, a direction by the Court to pay the purchase money to a wrong person (*Curtis v. Price*, 12 Ves. 89); or where some advantage has been taken of the parties to the cause (*Bowen v. Evans*, 1 J. & L. 178, 258); or on the ground of want of jurisdiction except as against a person whose concurrence

ought to have been and was not obtained (*Re Shephard's Settled Estates*, 8 L. R. Eq. 573).

It is competent to a purchaser to object at any time before completion, that the order for sale was in excess of the jurisdiction (*Green v. Thompson, ubi supra*), such objection being raised by summons (*Re Shephard's Settled Estates*).

Costs.

41. It shall be lawful for the Court, if it shall think fit, to order that all or any costs or expenses of all or any parties of and incident to any application under this Act shall be a charge on the hereditaments which are the subject of the application, or on any other hereditaments included in the same settlement and subject to the same limitations; and the Court may also direct that such costs and expenses shall be raised by sale or mortgage of a sufficient part of such hereditaments, or out of the rents or profits thereof, such costs and expenses to be taxed as the Court shall direct.

A re-enactment of 19 & 20 Vict. c. 120, sec. 29.

The scale of fees and allowances to be taken by solicitors and officers of the Court, are regulated by Orders 20, 22, 29, & 30 (*post*), which incorporate the 8th, 9th, 12th, & 13th Rules of Order V. & Order VI. of the Additional Rules of Court under the Supreme Court of Judicature Act, 1875, dated 12th of August, 1875, and the orders made under the same Act, dated the 28th October, 1875.

Trustees of a will will be allowed their costs of appearing upon a petition (*Re the D. of Cleveland's Harte Estates*, 2 L. T., N. S., 78).

In *Re Hurl's Settled Estates* (2 H. & M. 204), the order contained a declaration that the costs and expenses of all parties as between solicitor and client, of so much of the petition as was not dismissed, including the costs of the trustees of so much of the petition as

was dismissed, ought to stand as a charge on the devised estate. In *Re Robert Tunstall's Will* (14 L. T., N. S., 352), the costs were ordered to be raised by way of mortgage on the settled estate, the name of the person advancing the money necessary for the payment of costs being inserted in the order so as to save the expense of a mortgage deed. The petition in the former of these cases was for the dedication of part of the settled estate in the making of roads ; in the latter case for the authorization of an agreement for a particular lease.

Where a general power of granting mining leases had been by order vested in trustees, the costs of a motion to amend the order by striking out the condition that the leases should be settled by the judge were directed to be paid out of the one-fourth of the mining rents held in trust for the inheritance (*Lovat v. Duke of Leeds*, 11 L. T., N. S., 442).

The costs of an application necessitated by a deficiency in the instrument creating the settlement which is for the benefit of all parties : *e.g.*, a petition for general powers of leasing, must be paid out of corpus (*Wheeler v. Tootal*, 16 W. R. 273), but where the application is for the benefit solely of the tenant for life, *e.g.*, a petition for payment of income, the costs will be paid out of income (*Re Marner's Trusts*, 3 L. R. Eq. 432). If, however, the petition asks as well for the appointment of new trustees as for the payment of income, the costs of all parties as between solicitor and client will come out of corpus (*Re Parby's Trusts*, 29 L. T. 72).

As to costs upon a petition for payment out of Court, see *In re Pattison's Devised Estates* (W. N. 1876, p. 290).

As to costs in proceedings for protection, see the special provisions of *section 17*.

42. General rules and orders of Court for carrying into effect the purposes of this Act, and for regulating the times and form and mode of procedure, and generally the practice of the Court in respect of the matters to which this Act re-

Rules and orders.

lates, and for regulating the fees and allowances to all officers and solicitors of the Court in respect to such matters, shall be made so far as relates to proceedings in England by any three or more of the following persons, of whom the Lord Chancellor shall be one: namely, the Lord Chancellor, the Lord Chief Justice of England, the Master of the Rolls, the Lord Chief Justice of the Common Pleas, the Lord Chief Baron of the Exchequer, and four other judges of the Supreme Court of Judicature to be from time to time appointed for the purpose by the Lord Chancellor in writing under his hand, such appointment to continue for such time as shall be specified therein, and so far as relates to proceedings in Ireland by any three or more of the following persons, of whom the Lord Chancellor of Ireland shall be one: namely, the Lord Chancellor of Ireland, the Lord Chief Justice of Ireland, the Master of the Rolls in Ireland, the Lord Chief Justice of the Common Pleas, and the Lord Chief Baron, and four other judges of the superior Courts in Ireland to be from time to time appointed for the purpose by the Lord Chancellor of Ireland in writing under his hand, such appointment to continue for such time as shall be specified therein, and such rules and orders may from time to time be rescinded or altered by the like authorities respectively, and all such rules and orders shall take effect as general orders of the Court.

19 & 20 Vict. c. 120, sec. 30.

In England the Lord Chancellor appointed under this section the three Vice-Chancellors and Mr. Justice Fry for the purpose of making rules and orders, such appointment to continue until the 31st of December, 1879. The Lord Chancellor, the Master of the Rolls, and the four judges so appointed, drew up orders dated

December 1878, and to be known as the " Settled Estates Act Orders, 1878 " (Order 34), which came into operation on the 7th January, 1879. These will be found in the Appendix in the full text, and their substance has been analyzed in the Summary of the Practice.

43. All general rules and orders made as aforesaid shall be laid before each House of Parliament within forty days after the making thereof if Parliament is then sitting, or if not, within forty days after the commencement of the then next ensuing session, and if an address is presented to Her Majesty by either House of Parliament within the next subsequent forty days on which the said house shall have sat, praying that any such rule or order may be annulled, Her Majesty may thereupon by Order in Council annul the same, and the rule or order so annulled shall thenceforth become void and of no effect, but without prejudice to the validity of any proceedings which may in the meantime have been taken under the same.

Rules and orders to be laid before Parliament.

19 & 20 Vict. c. 120, sec. 31.

44. The powers vested in the High Court of Justice by this Act may, so far as relates to estates within the County Palatine of Lancaster, be exercised also by the Court of Chancery of the said County Palatine ; and general rules and orders of Court for the purposes aforesaid, so far as relates to proceedings in the said Court of the said County Palatine, shall be made by the Chancellor of the Duchy and County Palatine of Lancaster, with the advice and consent of any one or more of the persons authorized under this Act to concur in the making of general rules and orders relating to proceedings in England, and also with the advice and consent of the Vice-Chancellor of the said County Palatine.

Concurrent jurisdiction of the Court of Chancery of the County Palatine of Lancaster.

Application
for lease or
sale in Ire-
land may
be made to
Landed Es-
tates Court.

45. It shall and may be lawful for any person who under the provisions of this Act may make an application to the Court of Chancery in Ireland for the lease or sale of a settled estate, instead of making such application to the said Court of Chancery in Ireland to apply to the Landed Estates Court, Ireland, for the purpose of having the lease or sale of such settled estate under the said last-mentioned Court ; and thereupon it shall be lawful for the said Landed Estates Court, Ireland, to exercise all the powers conferred upon the Court of Chancery in Ireland in relation to leases or sales of such nature under the provisions of this Act, save that the judge in the case of a sale shall himself execute the conveyance to the purchaser under such sale, and save that such conveyance shall have the like operation and effect, and confer such indefeasible title to the purchaser as if such sale had been made and such conveyance had been executed upon an application for the sale of an incumbered estate under the Act of the twenty-first and twenty-second years of her Majesty, chapter seventy-two : Provided always, that the Landed Estates Court, Ireland, shall make such investigation of the title and circumstances of the said estates as shall appear expedient, and also in cases of sales as in other cases preliminary to sales conducted in the said Landed Estates Court, Ireland : Provided also, that every decision and order in the course of such proceedings shall be subject to appeal to the Court of Appeal in Chancery as in other cases under the said Act.

The Landed Estates Court is now merged in the Chancery Division of the High Court of Justice in Ireland. See the note to section 3, ante.

Tenants for
life, &c.,
may grant

46. It shall be lawful for any person entitled to the possession or to the receipt of the rents

and profits of any settled estates for an estate for any life, or for a term of years determinable ^{leases for 21 years.} with any life or lives, or for any greater estate, either in his own right or in right of his wife, unless the settlement shall contain an express declaration that it shall not be lawful for such person to make such demise; and also for any person entitled to the possession or to the receipt of the rents and profits of any unsettled estates as tenant by the courtesy, or in dower, or in right of a wife who is seised in fee, without any application to the Court, to demise the same or any part thereof, except the principal mansion house and the demesnes thereof, and other lands usually occupied therewith, from time to time, for any term not exceeding twenty-one years so far as relates to estates in England, and thirty-five years so far as relates to estates in Ireland, to take effect in possession at or within one year next after the making thereof; provided that every such demise be made by deed, and the best rent that can reasonably be obtained be thereby reserved, without any fine or other benefit in the nature of a fine, which rent shall be incident to the immediate reversion; and provided that such demise be not made without impeachment of waste, and do contain a covenant for payment of the rent, and such other usual and proper covenants as the lessor shall think fit, and also a condition of re-entry on nonpayment of the rent for a period of twenty-eight days after it becomes due, or for some less period to be specified in that behalf; and provided a counterpart of every deed of lease be executed by the lessee.

This section corresponds to sec. 32 of 19 & 20 Vict. c. 120, but differs from it in the following particulars:—

- (1.) The lease may be made by any person entitled
“for an estate for *any* life, or for a term of

years, determinable with *any* life or lives." The original section applied only to persons entitled "for an estate for life, or for a term of years determinable with *his* life."

- (2.) Leases of 35 years are authorized of estates in Ireland.
- (3.) The lease may be made to take effect "within one year after the making thereof," following the form adopted in the Act for the Abolition of Fines and Recoveries.
- (4.) The condition of re-entry must be for non-payment of rent for a period of 28 days "or for some less period."
- (5.) A condition of re-entry on non-observance of any of the covenants and conditions contained in the lease, is no longer requisite.

The section only applies to persons taking under a settlement "*made* after the 1st of November, 1856" (sec. 57).

A person is to be deemed "entitled to the possession or to the receipt of rents and profits," notwithstanding any charge or incumbrance on the estate (see *post*, sec. 54).

A tenant in tail after possibility of issue extinct is to be deemed a tenant for life (see *ante*, sec. 2).

Compare the provisions of the Act for the Abolition of Fines and Recoveries (3 & 4 Will. IV. c. 74) as to the powers of disposition given to a tenant in tail. A lease granted "for any term not exceeding 21 years, to commence from the date of such lease, or from any time not exceeding 12 calendar months from the date of such lease, where a rent shall be thereby reserved which at the time of granting such lease shall be a rack-rent, or not less than five-sixth parts of a rack-rent," was excepted from section 41, which provides for the enrolment of assurances.

The legislature did not intend the provisions of this section to apply to a case where the tenant for life was not the manager of the estate. Where, therefore, the management of the estate is in trustees who are clearly by the express terms of the will the persons to

receive the rents, to pay the charges of insurances, repairs, collections, and other necessary outlay; the tenant for life in such a case is not a person "entitled to possession" within the meaning of the section (*Taylor v. Taylor*, 20 L. R. Eq. 302, 303).

The time of payment is not fixed by this section (as it is by sec. 4 in the case of leases by authority of the Court). In *Rutland v. Doe d. Wythe and Others* (12 M. & W. 356; 10 Cl. & F. 419), where the power was very analogous in form to the wording of this section, a demise for 21 years at a yearly rent payable half-yearly by equal portions, except the last half-year's rent, which was reserved and agreed to be paid on a day prior to the expiration of the term, was held to be a good execution of the power, notwithstanding the exception mentioned. "It is clear that under and consistently with this power, which says nothing as to the time of payment, the yearly rent might have been reserved and made payable yearly, half-yearly, or quarterly, and . . . it follows as a consequence that a yearly rent means a rent payable within each year, not payable merely at the end of the year" (per L. C., at p. 467). It is noticeable that there is an important and assumedly designed distinction between the wording of this section and that of sec. 4, which runs thus: "On every such lease shall be reserved the best rent or reservation in the nature of rent, either uniform or not, that can be reasonably obtained to be made payable half yearly or oftener, without taking any fine or other benefit in the nature of a fine." The difference between the two sections would seem to show that it was the intention of the legislature, while restricting the powers of a tenant for life as to the nature of the rent to be reserved, to give him greater discretion as to the mere form of the lease and the manner and times of payment.

The words "to be incident to the immediate reversion" occurred in the power discussed in *Yellowby v. Gower* (11 Exch. 274), and were held to be not complied with in the reservation of the rent to the lessor, "his

heirs and assigns." But if the leasing power is recited in the lease, the lease will, on the face of it, show that it is meant to be according to the power, and to make it so, the reservation of the rent to the lessor may be rejected as surplusage, the *reddendum* during the term being sufficient to make the rent payable to the parties entitled to the reversion (*Greenaway v. Hart*, 14 C. B. 340, 354). The safest way is to reserve the rent generally during the term without saying to whom (*Woodfall, Landlord and Tenant*, p. 345, 9th ed. See also *Davidson's Precedents*, vol. 3, part 1, p. 500, note (i)).

The interpretation of "*best rent*" is dependent upon all the facts and attendant circumstances. "Where the transaction is fair and no fine or other collateral consideration is taken by the tenant for life leasing under the power, and no injurious partiality shown by him in favour of the particular lessee, there ought to be something extravagantly wrong in the bargain in order to set it aside on this ground, for in the choice of a tenant there are many things to be regarded besides the mere amount of rent offered" (*Doe v. Radcliffe*, 10 East, 278). "There is but one criterion which our Courts always attend to as the leading criterion in discussing the question whether the best rent has been got or not, that is, whether the man who makes the lease has got as much for others as he had got for himself, for if he has got more for himself than for others, that is decisive evidence against him. The Court must see that there is reasonable care and diligence exerted to get such rent as, care and diligence being exerted, circumstances mark out as the rent likely to be obtained" (per Lord Eldon in the *Queensbury Case*; Sugden on Powers, p. 785).

As to leasing powers generally, see *Davidson's Precedents*, vol. iii., part 1, Settlements, pages 479-543.

The above section, "though giving a sufficient power to tenants for life to grant agricultural and occupation leases, has not superseded the practice of giving an express power to tenants for life to grant such leases; for the Act does not provide for leases being granted

during the minority of the tenant in possession " (*ibid.* p. 535).

47. Every demise authorized by the last preceding section shall be valid against the person granting the same, and all other persons entitled to estates subsequent to the estate of such person under or by virtue of the same settlement if the estates be settled, and in the case of unsettled estates against the wife of any husband granting such demise of estates to which he is entitled in right of such wife, and against all persons claiming through or under the wife or husband (as the case may be) of the person granting the same.

Against whom such leases shall be valid.

This section consolidates 19 & 20 Vict. c. 120, sec. 33, with 21 & 22 Vict. c. 77, sec. 8.

The Act does not affect the rule that a parol agreement to grant a lease entered into by a tenant for life with leasing powers, coupled with part performance by the lessee during the lifetime of the tenant for life, does not bind the remainderman who did not know of the agreement or acquiesce in the part performance (*Hope v. Lord Cloncurry*, 8 Ir. R. Eq. 555).

48. The execution of any lease by the lessor or lessors shall be deemed sufficient evidence that a counterpart of such lease has been duly executed by the lessee as required by this Act.

Evidence of execution of counterpart lease by lessee.

Sec. 34 of 19 & 20 Vict. c. 120, re-enacted verbatim.

Execution by the "lessor" must include execution by the person appointed under section 12 to execute as lessor.

49. All powers given by this Act, and all applications to the Court under this Act, and consents to and notifications respecting such applications, may be executed, made, or given by,

Provision as to infants, lunatics, &c.

and all notices under this Act may be given to guardians on behalf of infants, and by or to committees on behalf of lunatics, and by or to trustees or assignees of the property of bankrupts, debtors in liquidation, or insolvents : Provided nevertheless, that in the cases of infant or lunatic tenants in tail no application to the Court or consent to or notification respecting any application may be made or given by any guardian or committee without the special direction of the Court.

This section alters the wording of 19 & 20 Vict. c. 120, sec. 36, to make it conform to the present law of bankruptcy, and extends the proviso to notifications as well as to applications and consents.

As to guardians of infants, see Orders 4, 5, 8, 10.

As to committees of lunatics, see Order 4.

As to lunatic or infant tenants in tail, see Orders 6, 7, 9, 11, 12.

And as to the practice generally where persons under disability are interested in property to be dealt with under the Act, see the Summary of the Practice, *post*.

The concurrence of the father of an infant is not sufficient, even though *primâ facie* he has no adverse interest (*Re Caddick's Settled Estates*, 7 W. R. 334), nor is the concurrence of the infant's testamentary guardian sufficient (*Re Robert James, deceased*, 5 L. R. Eq. 334, where, however, Wood, V.-C., rested his decision rather on the Consolidated Orders than on the words of the section). And see the remarks of Baggallay, L. J., in *Re The Marquis of Salisbury*, 2 Ch. D. 39, upon this section and the practice under it. But the natural, testamentary or judicially appointed guardian of the infant must be served with notice of the application for the appointment of a guardian under the Act (Order 8).

The Court has no general jurisdiction to give consent. The power is expressly confined by the statute to special cases, and the Court has no power to appoint a guardian to consent to an application on behalf of a person of un-

sound mind, not so found by inquisition (*Re Clough's Estate*, 15 L. R. Eq. 284, overruling *Re Venner's Settled Estates*, 6 L. R. Eq. 249). The consent can only be given by the committee duly appointed of a lunatic, and the committee must obtain the authority of the jurisdiction in lunacy before doing anything affecting the property of the lunatic (*Re Woodcock's Trusts*, 3 L. R. C. A. 229). The procedure is for the committee to apply for a special report by the Master in Lunacy to the Lords Justices approving of the application, and the indorsement of the Lords Justices will be the authority to the committee to consent to the application in Chancery (*S.c.*). And see *Re Warde* (1 H. & T. 202). This practice has now been adopted by the Orders under the Act (*Order 11*).

50. Where a married woman shall apply to the Court, or consent to an application to the Court, under this Act, she shall first be examined apart from her husband touching her knowledge of the nature and effect of the application, and it shall be ascertained that she freely desires to make or consent to such application; and such examination shall be made whether the hereditaments which are the subject of the application shall be settled in trust for the separate use of such married woman independently of her husband or not; and no clause or provision in any settlement restraining anticipation shall prevent the Court from exercising, if it shall think fit, any of the powers given by this Act, and no such exercise shall occasion any forfeiture, anything in the settlement contained to the contrary notwithstanding.

A married woman applying to the Court, or consenting to be examined apart from her husband.

A re-enactment of 19 & 20 Vict. c. 120, sec. 37.

The practice under this section is now regulated by Orders 13 & 14.

The 13th Order settles the disputed point as to the

time when the examination should take place (*Re Foster's Settled Estates*, 1 De G. & J. 386; *Re Manson's Settled Estates*, 24 Beav. 220; *Re Packer*, 39 L. J. Ch. 220), and orders the examination to be taken at any time after the petition is presented and answered.

Where the taking of the consent of a married woman had been omitted *per incuriam* until after the order on the petition had been made, the Court allowed this to be done subsequently, and ordered that after her consent had been obtained a fresh application should be made to have the order post-dated (*Re Turbutt's Settled Estates*, 8 L. T., N. S., 657).

The examination is necessary not only where the property is settled on the married woman, but also where she is entitled to an interest, *e.g.*, a jointure in the settled property (*S.c.*, 2 N. R. 487). And for the purposes of the Act a married woman who is a minor is in the same position as a married woman of full age, and her consent must be taken by examination in the same way as if she was of full age (*Re Broadwood's Settled Estates*, 7 L. R., C. A., 323).

The examination of married women has been dispensed with in the following cases:—Upon a petition for the authorization of a lease where the married woman was entitled to an interest in a fourth part of a sum charged upon the settled estates upon a trust for raising portions, which fourth had been resettled upon her marriage and vested in trustees, her examination was dispensed with on the ground that her interest was remote and sufficiently represented by the trustees of her marriage settlement (*Re Lord de Tabley's Settled Estates*, 11 W. R. 936); upon a petition for a sale where the married woman was abroad, but she and her husband and the trustees had been served (*Re Tibbett's Settled Estates*, 17 W. R. 394); upon a petition for general powers of leasing where the married woman was resident in the United States of America, although she had a life interest together with a possible absolute interest in the whole property (*Re Thorne's Settled*

Estates, 20 W. R. 587); also where the married woman was resident in New Zealand, and her examination would cause great delay, the particular lease sought to be sanctioned being clearly for the benefit of all parties (*Re Halliday's Settled Estates*, 12 L. R. Eq. 199); also where the married woman was only contingently entitled to rent-charges or portions out of the estates (*Re Earl of Kilmorey's Settled Estates*, 26 W. R. 54). The giving of directions in chambers for the insertion of advertisements is a sufficient judicial proceeding to enable the Court to dispense with the examination of a married woman who has been married since the presentation of the petition (*Re Marshall's Settled Estates*, 15 L. R. Eq. 66).

An affidavit of no settlement is not necessary in the case of a married woman interested in an application under the Act (*Re Standish's Settled Estates*, 24 W. R. 8).

51. The examination of such married woman when resident within the jurisdiction of the Court to which such application is made, shall be made either by the Court or by some solicitor duly appointed by the Court for that purpose, who shall certify under his hand that he has examined her apart from her husband and is satisfied that she is aware of the nature and effect of the intended application, and that she freely desires to make or consent to the same. And when the married woman is resident out of the jurisdiction of the Court to which such application is made, her examination may be made by any person appointed for that purpose by the Court, whether he is or is not a solicitor of the Court, and such person shall certify under his hand to the effect hereinbefore provided in respect of the examination of a married woman resident within the jurisdiction. And the appointment of any such person not being a solicitor

Examina-
tion of mar-
ried woman
how to be
made when
residing
within the
jurisdiction
of the Court,
and how
when resid-
ing without
such juris-
diction.

shall afford conclusive evidence that the married woman was at the time of such examination resident out of the jurisdiction of the Court.

This section consolidates 19 & 20 Vict. c. 120, sec. 38, with 21 & 22 Vict. c. 77, sec. 6.

See *Order 14*, and the Summary of the Practice, *post*.

The solicitor appointed to take the consent should be an independent solicitor (*Re Manson's Settled Estates*, 24 Beav. 220), and not the solicitor acting in the petition (*Re Brealey's Settled Estates*, 29 L. T. Ch. 208), nor the solicitor acting for the husband (*Re Noyes*, 6 W. R. 7), nor the solicitor acting for any party whose concurrence or consent to the application is required (see Form 7 appended to the Orders under the Act).

The fact of the signatures of the commissioner and of the married woman appended to her separate examination being attested by the husband's solicitor is not a valid objection (*Re Lewis*, 24 W. R. 103; but see *contra*, *Re Bendyshe*, 3 Jur., N. S., 727; 5 W. R. 816).

In *Re Johnson's Settled Estates* (W. N., 1869, p. 87), the examination of a married woman, resident at Boulogne, was ordered to be taken by the British Consul at that town.

In *Re Taylor's Settled Estates* (14 L. R. Eq. 557), and *Re Packer* (39 L. J. Ch. 220), the examination was taken in Court.

As to application by, or consent of, married women, whether of full age or under age.

52. Subject to such examination as aforesaid, married women may make or consent to any applications, whether they be of full age or infants.

Sec. 39 of 19 & 20 Vict. c. 120, re-enacted verbatim.

A married woman, who is a minor, is therefore subject to examination just as if she were of full age (*Re Broadwood's Settled Estates*, 7 L. R. C. A. 323).

No obliga-

53. Nothing in this Act shall be construed to

create any obligation on any person to make or consent to any application to the Court or to exercise any power. tion to make or consent to application, &c.

19 & 20 Vict. c. 120, sec. 40, re-enacted.

See *Re Hurle's Settled Estates* (2 H. & M. 196; 11 Jur., N. S., 78).

54. For the purposes of this Act, a person shall be deemed to be entitled to the possession or to the receipt of the rents and profits of estates, although his estate may be charged or incumbered either by himself or by the settlor, or otherwise howsoever, to any extent; but the estates or interests of the parties entitled to any such charge or incumbrance shall not be affected by the acts of the person entitled to the possession or to the receipt of the rents and profits as aforesaid unless they shall concur therein. Tenants for life, &c., to be deemed entitled notwithstanding incumbrances.

Sec. 41 of 19 & 20 Vict. c. 120, re-enacted verbatim.

55. Provided always, that nothing in this Act shall authorize any sale or lease beyond the term of twenty-one years of any settled estates in respect of which, under the Act of the thirty-fourth and thirty-fifth years of King Henry the eighth, chapter twenty, "to embar feigned recovery of lands wherein the King's Majesty is in reversion," or any other Act of Parliament, the tenants in tail are restrained from barring or defeating their estates tail, or where the reversion is vested in the Crown. Exception as to entails created by Act of Parliament.

Sec. 42 of 19 & 20 Vict. c. 120, re-enacted.

56. Nothing in this Act shall authorize the granting of a lease of any copyhold or customary hereditaments not warranted by the custom of Saving rights of lords of manors.

the manor without the consent of the lord, nor otherwise prejudice or affect the rights of any lord of a manor.

Sec. 43 of 19 & 20 Vict. c. 120, re-enacted verbatim.

To what
settlements
this Act to
extend.

57. This Act shall, except as hereinafter provided, apply to all matters existing at the time of the passing of this Act, whether proceedings are actually pending or not, and any proceedings in any such matter may be continued or taken under this Act as if the matter originated under this Act, or may be continued or taken under the Acts hereby repealed, or partly under this Act and partly under the said repealed Acts as occasion may require: Provided always, that the provisions in this Act contained respecting demises to be made without application to the Court shall extend only to settlements made after the first day of November one thousand eight hundred and fifty-six.

This section corresponds to sec. 44 of 19 & 20 Vict. c. 120.

The date at the end of the section, 1st November, 1856, was the date of the commencement of the original Act (19 & 20 Vict. c. 120, sec. 46), of which sec. 44 ran thus: "The provisions of this Act shall extend to all settlements, whether made before or after it shall come into force, except as to those demises to be made without application to the Court which shall extend only to settlements made after this Act shall come in force." The proviso in the above section is therefore only a re-enactment.

Repeal of
Acts speci-
fied in sche-
dule.

58. The Acts specified in the schedule to this Act are hereby repealed: Provided always, that this repeal shall not affect anything done or any

proceeding taken under any enactment hereby repealed.

In cases where a private Act of Parliament has enacted that subject to its provisions the provisions of the Settled Estates Act, 1856, should apply to the estates comprised in the private Act, the provisions of the Settled Estates Act, 1856, become part of the private Act, and thus being private legislation are not repealed by the Act of 1877, which can only be held to repeal the Act of 1856 in its character of a public Act (*Re Bolton Estate Act*, W. N., 1878, p. 65).

The schedule referred to in the section is as follows :

SCHEDULE.

Session and Chapter.	Title or Short Title.
19 & 20 Vict. c. 120 .	An Act to facilitate leases and sales of Settled Estates.
21 & 22 Vict. c. 77 .	An Act to amend and extend the Settled Estates Act of 1856.
27 & 28 Vict. c. 45 .	An Act to further amend the Settled Estates Act of 1856.
37 & 38 Vict. c. 33 .	The Leases and Sales of Settled Estates Amendment Act, 1874.
39 & 40 Vict. c. 30 .	The Settled Estates Act, 1876.

59. Nothing in this Act shall interfere with ^{Saving.} the exercise of any powers to authorize or grant leases conferred by any Act of Parliament not expressly repealed by this Act.

Extent of
Act.

60. This Act shall not extend to Scotland.

Commence-
ment of Act.

61. This Act shall commence on the first day
of November, one thousand eight hundred and
seventy-seven.

SUMMARY OF THE PRACTICE.

The issue of Orders under the Settled Estates Act, 1877 (to be known by the short title of "The Settled Estates Act Orders, 1878,") has very materially altered the practice under the Act. The hearing of the petition is accelerated and made now one of the earliest stages of the proceedings after the presentation of the petition, it being left to a further consideration to remedy any defects which may then appear in the application. At the same time much wider powers are given to the petitioner in the conduct of the application, *e. g.* in the appointment of guardians of infants, and in the examination of married women. The day for the hearing may be fixed upon the presentation of the petition, and where there are no parties under disability, the hearing may take place eight days after the presentation, or by special leave, even sooner. Where there are infants interested, one summons will answer for the appointment of guardians to all of them. Where there are married women interested, one person will be able to take the examinations of all, or of as many of them as circumstances render it convenient. The effect of the Orders is in a word considerably to simplify and shorten the procedure.

In the following summary of the practice the authorities are not quoted, but will be found in the notes to the sections and orders referred to.

The powers given to the Court by the provisions of this Act relate to all settlements of whatever date (section 57) which come within Jurisdiction.

the definitions contained in section 2. The jurisdiction is only ousted by (1) the previous refusal of an application to Parliament with a similar object (section 32); (2) the occurrence in the settlement of an express declaration against the exercise of such powers as are conferred by this Act (section 38); and (3) the fact of the powers applied for being more extensive than any that could have been contained in the settlement (section 39). But within these limits the Court may exercise the powers conferred by the Act repeatedly (section 38); and notwithstanding the circumstance of the settlement containing similar powers. (*Ibid.*).

Petition.

The Act is set in motion by petition (section 23); and a petition is necessary whether an action is pending or not. The petition is presented in the matter of the estate proposed to be dealt with, and in the matter of the Act (Order 2), which must be sufficiently identified. It is prepared and left to be answered in the ordinary manner (Order 28).

The parties to it are,—

Parties.

I. As petitioners (section 23), any person entitled *either* (1) to the possession of the settled estate, *or* (2) to the receipt of the rents and profits for a term of years determinable on his death, *or* (3) to an estate for life, *or* (4) to any greater estate, *or* (5) as the assignee of any person coming within one or other of the four preceding classes.

II. As respondents (section 24):—

A. Where the settlement creates an entail (1) either the tenant-in-tail if there be one in existence and of full age, or the first tenant-in-tail if there be more than one such, *and* (2) all persons in existence having any beneficial estate or interest prior to that of the above, *and* (3) all

trustees representing unborn children coming within class 2.

- B. In every other case (1) all the persons in existence having any beneficial estate or interest, *and* (2) all trustees representing unborn children.

Trustees for any of the respondents need not be made parties, but must be served with notice of the application (section 30), evidence of such service must be produced at the hearing (Order 16). Trustees so served are entitled to inspect and peruse the petition without payment of any fee (Order 22), and to be furnished with a copy of it on payment of the usual charges.

If an infant is entitled to an estate or interest Infants. in settled property, a guardian must be specially appointed by the Court for the purpose of making or consenting to an application under the Act (section 49). The procedure on the appointment of a guardian is as follows : If the petitioner is an infant the petition is presented Infant petitioner. by his next friend and answered ; the next friend then issues on behalf of the infant a summons for the appointment of a guardian, and serves the summons on the natural, testamentary or judicially appointed guardian of the infant (Order 8), if the circumstance admit—when the order appointing the guardian has been made the petition is amended by substituting the guardian for the next friend in the title to the petition, and the proceedings are thenceforth conducted by the guardian. If the infant is not Infant respondent. a petitioner, the summons for the appointment of a guardian is issued by the petitioner and served on the natural, testamentary or judicially appointed guardian as above (Order 8). The evidence in support of this summons must cover the following facts (Order 10) :—

1. The age of the infant.

2. The existence of a natural, testamentary or judicially appointed guardian, the interest of such guardian (if any) in the application, its nature and its bearing on the infant's interest.

3. Circumstances of the residence, care and maintenance of the infant.

4. Relation of the proposed guardian to the infant, and the reasons and qualifications for the appointment.

5. That the proposed guardian has no interest adverse to that of the infant.

6. The consent of the guardian to act.

Infant
tenant in
tail.

Where the infant is a tenant in tail, the guardian cannot act without the special directions of the Court (section 49). Such directions are obtained on a summons issued by the petitioner (Order 6), and served upon the guardian of such infant appointed or proposed to be appointed under the Act (Order 9). This summons for directions may be combined with the summons for the appointment of a guardian (Order 6). In such a case, besides the evidence above indicated as requisite in ordinary cases, there must be produced an affidavit by the guardian stating that he believes that it is proper and consistent with a due regard for the interest of the infant that such direction shall be given (Order 12).

Lunatics.

A lunatic who is entitled to an estate or interest in settled property is represented in all proceedings under the Act by his committee, duly appointed by the jurisdiction in Lunacy (section 49). The committee must apply to the Master in Lunacy for a special report on the proposed proceedings. This report is submitted to the judges for the time being having jurisdiction in Lunacy and is endorsed by them. The report so indorsed is the authority of the committee to act in the matter. But if the lunatic be a tenant in tail, the committee must

Lunatic
tenant in
tail.

farther obtain the special directions of the Court (section 49), *i.e.*, of the Chancery Division (section 3), before making an application or consenting to one. These special directions are obtained on a summons issued by the petitioner (Order 6), and served upon the committee (Order 9). On the return of this summons the authority so given as before mentioned to the committee by the judges having jurisdiction in Lunacy is, apart from special circumstances, sufficient evidence upon which the Court may direct the committee to act in conformity with such authority (Order 11).

Bankrupts, debtors in liquidation, or insolvents ^{Bankrupts, &c.} are represented in all proceedings under the Act by their trustees or assignees, who under no circumstances require any further authority from the Court (section 49).

Any married woman may make or consent to ^{Married women} any application under the Act, whether she be of full age or not (section 52), even if there be contained in the settlement a clause or proviso against anticipation (section 50). But whether she be of full age or an infant, the power of a married woman in this respect is subject to her having been previously examined apart from her husband (section 52), and this, notwithstanding that the property be settled to her separate use (section 50). The Court has in some instances dispensed with the examination, but these are few and only extreme cases, where the remoteness of the interest of the married woman, or the fact of her being sufficiently represented, or her place of residence rendering it very difficult to examine her, have shown this course to be admissible. The examination goes to the woman's "knowledge of the nature and effect of the application" (section 50) and her free desire to make or consent to it. The examination may be

taken at any time after the petition is presented and answered (Order 13). When the married woman is resident within the jurisdiction, her examination may be taken either (1) by the Court, or (2) by a solicitor duly appointed by the Court for the purpose (section 51). An examination by the Court may be taken either in open Court or in chambers. If it is taken in open Court a note of it is made by the registrar. If in chambers a minute of its result will be indorsed on the petition and signed by the chief clerk (Order 28). In the practice on the taking of examinations by solicitors very important alterations have been effected by the Orders of 1878. The petitioner has the conduct of the examination as he has of the appointment of guardians, and has the nomination of the examiner. In all ordinary cases within the jurisdiction, the appointment of an examiner may be made at chambers, without summons or order, by the judge, upon the "request" of the petitioner. If this course is adopted, the solicitor selected to take the examination must be a perpetual commissioner to take acknowledgments of deeds by married women, and must be certified by the solicitor for the petitioner to be not a solicitor for the petitioner, or for any party interested in the petition (Order 14). The request need not be served on any party, and one examiner can take the examination of all the married women interested in the petition, or of as many of them as may be convenient (see Form 7 in the Appendix to the Orders). In special cases within the jurisdiction (*e.g.* where reasons exist on the ground of unreasonable expense, delay, or inconvenience), and in cases where the married woman is resident out of the jurisdiction, the petitioner takes out an *ex parte* summons at chambers to appoint an examiner, who, if the

within the
jurisdiction;

out of the
jurisdiction.

examination is to take place within the jurisdiction, must be a solicitor (Order 14). The written examination must be in the form prescribed by the Orders (Form No. 9 in the Appendix thereto and Order 27), and the examiner must make a certificate that he took the examination, explained the nature and effect of the application, and obtained the consent or otherwise, as the case may be, of the married woman (Form No. 10). The examination and certificate must be verified by the affidavit of an independent person (Form No. 11).

Upon the presentation of the petition a day must be appointed for the hearing. This may be eight clear days after the presentation, or by special leave, even earlier (Order 2), so that where no difficulties come in the way, arising from the disability of parties or otherwise, the petition may be heard almost immediately after presentation, and an order made. If, however, on the appointed day the parties are not ready (Order 3), or if the Court is of opinion that notice ought to be served on some person who has not been served, or that advertisements are desirable (Order 18); or if some other reason exists against the immediate disposal of the petition on the day appointed for the hearing, the petition may be allowed to stand over generally, or a subsequent day may be appointed. If it stands over generally, no application to the Court or judge is necessary to restore it to the paper, which is done on an application by the petitioner to the secretary of the Lord Chancellor or Master of the Rolls (as the case may be) two clear days' notice of such subsequent hearing being given to the other parties interested (Order 3). Setting down.

The evidence required on the hearing of every petition must consist of the following facts:— Standing over.

1. That it is proper and consistent with a due regard for the interests of all parties entitled that the powers of the Act should be exercised, giving the ground for stating it to be so (sections 4, 16, and 17, and Order 15).

2. That notice of the application has been served on all trustees (section 30 and Order 16).

3. That an application to a similar effect has not been made to Parliament, or if one has been made, that it has not been rejected or reported against (section 32 and Order 17).

If the petition is under section 4 for a lease or for powers of leasing, there must be evidence to show:—(1) the nature of the estate, (2) its value, (3) its circumstances, and (4) the terms and conditions on which leases thereof ought to be authorized (section 11).

Reference to
chambers.

When at the hearing it appears that all the parties whose consent is required by the Act are present and consent, the Court may make an immediate order in such terms as appear to the judge to be proper; or it may make a reference to chambers for inquiries to be made as to matters which appear to the judge to require investigation before the order is made. The latter course will now be generally superseded by fuller evidence being required at the hearing, though in the event of the evidence not being conclusive, such reference may still be made. The proceedings in chambers in such a case do not differ from those upon an order in an action for a sale, or upon an order for the granting of a lease to be approved by the judge, as the case may be (Order 28).

Absent
parties.

Where, however, the persons whose concurrence or consent is required are not all present or have not all given in their consent, any one of the four following courses is open to the Court according to the circumstances of the case:—

A. It may altogether dispense with the consent of any such person or persons, Dispensing with consent.

(1.) Where their interests are subsequent to that of an infant tenant in tail (sect. 25);

or

(2.) Where having regard to their number or their estates or interests it considers that an order may properly be made, notwithstanding that the consent has been refused (section 28).

B. The Court may direct notice to be served on any such person, specifying a time within which he shall deliver a notification of his intentions with regard to the petition, and in the default of the due delivery of such notification may deem him to have submitted his rights to be dealt with by the Court (section 26 and Order 18). Notice under section 26.

The times for delivering the notification are regulated by this last-mentioned order, and may be tabulated thus (Order 4):—

- (1.) Within the jurisdiction,
 in the case of infants—to be fixed by the order appointing the guardian. Time for notifications.
 „ married women—28 days.
 „ lunatics—28 days.
 „ all other cases—14 days.

(2.) Out of the jurisdiction, in special cases within the jurisdiction, and in the case of persons of unsound mind not so found—as the Court shall direct on an *ex parte* application by the petitioner at Chambers.

In the case of an infant or lunatic tenant in tail, the necessary special directions as to the notification (section 49), are obtained upon an application by the petitioner at chambers (Order 7), the summons being served upon the guardian or committee (Order 9). In the case of an infant Directions as to notifications.

tenant in tail the guardian must make an affidavit that the notification proposed to be made is proper and consistent with a due regard for the interest of the infant (Order 12). In the case of a lunatic tenant in tail the authority of the judges having jurisdiction in lunacy to the committee to deliver a notification is, apart from special circumstances, sufficient evidence in support of an application for directions under section 26 (Order 11). The person upon whom notice is so served under section 26 is entitled to inspect and peruse the petition without payment of any fee (Order 22), and to be furnished with a copy thereof.

Advertisements.

C. The Court may direct that notice of the application shall be inserted in the newspapers (Order 18), in which case the form of advertisement prescribed by the Orders must be used (Order 27 and Form No. 13). In the event of the Court giving such directions, any person may within the time specified in the notice (Order 19), or by special leave subsequently (Order 57, r. 6, under the Judicature Acts incorporated in the Settled Estates Act Orders by Order 26) apply by motion, either *ex parte*, or upon notice to the petitioner for leave to be heard on the application, but an order on an *ex parte* motion may be made upon terms as to costs. The person so obtaining leave to be heard must serve the order on the petitioner's solicitor (Order 21), and is then entitled to inspect and peruse the petition on paying a fee of 13s. 4d., and to obtain a copy subject to the usual charges (Order 20).

Leave to be heard.

The former Acts required the insertion of notices of the application in the newspapers, and the practice was immediately after the presentation of the petition to take out a summons for directions as to advertisements. The usual directions were for the insertion of a notice once

in the *London Gazette*, and once in each three successive weeks in some local paper. The notice was not settled in chambers nor was the copy for the *London Gazette* signed by the chief clerk, but the directions were written on the summons and signed by the solicitor for the petitioners, who produced it to the printer of the *Gazette*. For the future notices will only be inserted "if the Court shall so direct, but not otherwise" (section 31), but if directed will be governed by the practice hitherto in use (Order 28).

At one time extreme accuracy was required in the wording of these notices, even small inaccuracies or divergencies from the title of the petition having been held to necessitate a re-issue of the advertisements in strictly accurate form. But later decisions have recognized that the object of the advertisements is to give information of the application to persons interested, and have laid it down that this object is sufficiently satisfied by an advertisement which identifies the property with reasonable accuracy, and indicates the nature of the application. Now that the notices are rendered no longer compulsory it is presumed that the less rigid rules of these later decisions will prevail in cases where notices are directed, or, where they are specially desired by the parties, although the 2nd Order directs that notices shall have the same title as the petition.

D. Under the circumstances mentioned in section 27, the Court may dispense with notice and proceed as if there had been a default in delivering a notification in conformity with a notice. Dispensing
with notice.

E. Lastly, the Court may make an order "subject to and so as not to affect the rights, estate or interest" of any such person (sect. 29). Order saving
rights.

The order must contain directions as to the manner in which notice shall be indorsed on the Order.

deeds relating to the property (section 33), and if the Court dispenses with the indorsement of such notice, the order must contain a statement to this effect. The notice may be effected by the registration of a memorial where the lands are situated in a register county or district (Order 23).

Every order must state (Order 24) the following facts :—

- (1.) The names of the petitioners.
- (2.) The names of the other parties who concur or consent.
- (3.) The names of the persons on whom notice has been served.
- (4.) The names of persons who have obtained leave to be heard.
- (5.) Delivery and purport of notifications in reply to the notices.
- (6.) The names of the persons notice to whom has been dispensed with.
- (7.) Whether the order is made subject to the rights of any person.

In an order authorizing a lease there must be contained directions that the lease shall contain—

(1) the conditions required by the Act; (2) special covenants, conditions, and stipulations required by the circumstances of the particular case; or, (3) such covenants, conditions, and stipulations as shall be approved by the judge at chambers without being settled by the judge (Order 25).

When made the order is drawn up in the usual way, and the proceedings upon it are of the same form as those on an order for sale, or for the granting of a lease with the approbation of the judge (Order 28).

Moneys payable under the order.

The order may contain a direction that any moneys which may be payable under it shall be paid to trustees approved by the Court (see

tion 34), and that the moneys so paid to them shall be applied by them without further order from the Court (section 35).

If neither of these directions is contained in the order, then the moneys payable under the order must be paid into Court [*or in Ireland* into the Bank of Ireland to the account of the Accountant-General] "Ex parte (*the applicant*)", In the Matter of the Settled Estates Act, 1877" (section 34). Payment into Court.

Until moneys can be applied to the purposes for which they are ultimately destined they are treated as cash under the control of the Court and invested accordingly (section 36), the dividends on the investments being paid to the person entitled to the rents and profits of the land. Interim investment.

The purposes designated by the Act (section 34) for the ultimate application of moneys payable under an order made in the matter of this Act, are :— Application of moneys.

1. The redemption of the land tax [*or in Ireland*, of rent-charge in lieu of tithes, Crown rent, or quit rent];
2. The redemption of incumbrances;
3. The purchase of other lands, or the building of houses on land under the same settlement;
4. Payment to a person absolutely entitled.

Where moneys are paid in in respect of any lease for lives or years, or of any estate less than the fee simple, or of any reversion, greater latitude is given to the discretion of the Court in their application (section 37).

In the latter case, the petition is presented by "any party interested in such money" (section 37). Petition.

In all other cases, the order for the application of moneys paid in under the Act is made upon the petition of the person "who would be en-

titled to the possession or the receipt of the rents and profits of the land if the money had been invested in the purchase of land" (section 35).

The petition for the application of moneys does not come under the sections of the Act relating to consents, netices and advertisements.

Proceedings
for protec-
tion.

An application under section 17 for the purpose of obtaining the sanction of the Court to proceedings for protection is an application under the Act within section 23, and will be made on the petition of the persons therein mentioned (see *ante*, p. 70.)

Forms.

The Forms in the Appendix to the Orders are to be adhered to subject only to any variations necessary in any particular case (Order 27).

Orders.

The Orders are made subject to the power of the judge in person to dispense with all or any of them in his discretion (Order 32).

Fees and
stamps.

The fees and allowances to be taken by solicitors, and the fees to be taken by the officers of the Court are the same as those chargeable under the general practice as regulated by the Orders under the Supreme Court of Judicature Act dated 12th August, 1875, and 28th October, 1875, the only special charges being the following :—

	Higher Scale.	Lower Scale.
Request and certificate under Order 14 and Form No. 7 in the Appendix to the Orders :—Solicitor's fee .	£1 1s. 0d.	13s. 4d.
Stamp	0 3 0	2 0
Attendance at judge's cham- bers to procure the appoint- ment of an examiner :— Solicitor's fee	1 1 0	13 4

ORDERS

UNDER THE

SETTLED ESTATES ACT, 1877.

I, THE RIGHT HONOURABLE HUGH MAC CALMONT, BARON CAIRNS, LORD HIGH CHANCELLOR OF GREAT BRITAIN, DO HEREBY in pursuance of the 42nd section of "The Settled Estates Act, 1877," appoint the Vice-Chancellor Sir Richard Malins, the Vice-Chancellor Sir James Bacon, the Vice-Chancellor Sir Charles Hall, and Mr. Justice Fry, to be the four judges of the Supreme Court of Judicature, by whom, together with the Lord Chancellor, the Lord Chief Justice of England, the Master of the Rolls, the Lord Chief Justice of the Common Pleas, and the Lord Chief Baron of the Exchequer, rules and orders of court for carrying into effect the purposes of the said Act shall be made as therein mentioned. And this appointment is to continue in force until the 31st day of December, 1879.

Dated this 19th day of July, 1878.

CAIRNS, C.

1. The words "settlement," "settled estates," Definitions. and "the Court" in these Orders shall have the same interpretation as in the Act.

The words "the Act" in these Orders shall mean the Settled Estates Act, 1877, "the petition" shall mean a petition under the Act, and "the judge" shall mean the judge of the Court

with whose name the petition shall be marked, or to whom the petition shall be transferred.

The definitions of "settlement" and "settled estates" are given in *section 2*, and that of "the Court" in *section 3*.

Title of the
petition, &c.

Hearing.

Description
of the pro-
perty.

2. All petitions, notices, affidavits, and other proceedings under the Act shall be entitled "In the matter of the estates settled" [by the settlor or settlors, naming one of them and referring to the instrument by which the settlement shall have been created, and mentioning the parish or place and county in which the lands, messuages, or tenements proposed to be dealt with are situate] "and in the matter of the Settled Estates Act, 1877," and every such petition shall be marked with the words "In the High Court of Justice, Chancery Division," and with the title of the judge before whom it is intended to be heard (see form No. 1 in the Appendix hereto). Upon the presentation of the petition, a day shall be appointed for hearing not less (unless the judge gives special leave) than eight clear days after such presentation, and in the computation of such eight clear days Sundays and other days on which the offices are closed shall not be reckoned; and every petition shall, in the body thereof, or in a schedule thereto, or by a plan thereto annexed, contain a detailed description of the property proposed to be dealt with by such petition sufficient to identify the same.

This order in its first clause follows with but slight alteration the 15th Rule of Order 41 of the Consolidated Orders. The last clause, requiring a detailed description of the property to be dealt with to be embodied in the petition, is new, and its effect will be to shorten materially the title of the petition, although the latter was even formerly required to contain a description

only "in general terms." As the alteration made by this order is not very great, the original rule and the decisions thereunder are appended to this note.

A more important alteration is made in the time within which a petition may be set down for hearing after its presentation. Whereas it was formerly 21 days from the publication of the last of the advertisements (*Order 41, Rule 20*), it may in future be as soon as 8 days after the presentation of the petition, or even sooner by special leave.

The following is *Order 41, Rule 15*, above referred to :—

R. 15. All petitions and notices, and also all affidavits and other proceedings under the Act, shall be entitled in the matter of the Act and in the matter of the property in question, mentioning the county and parish or place in which it is situate, and describing it by general terms, and every such petition shall be marked with the words, "Master of the Rolls," or with the title of the Vice-Chancellor before whom it is intended to be heard.

The object of the title is to indicate the property sold, and the petition must be presented in the matter of the property and not in the matter of the settlement. It is not necessary that the proceedings under the Act should specify the particular settlement to which the property is at the time subject, provided the property be sufficiently identified and be actually under settlement (*Re Thompson's Settled Estates, Green v. Thompson, Johns. 418, 422*).

See also *Order 31, post*, for other necessary parts of the petition.

A slight discrepancy between the heading of an advertisement and the heading of the petition is not material, if no one is likely to be deceived by it (*Re Bicknell's Settled Estates, 20 W. R. 937*).

The title of a petition need not contain a full description of the property, but only such description as is necessary to make the matter intelligible (*Re Burnley's Settled Estates*, 23 W. R. 546).

It may be noticed that the order in the heading has been purposely changed so as to bring the description of the property into greater prominence by placing it first, and thus inverting the old form, which ran, "In the matter of the Act and in the matter of the property."

The form of title given in the Appendix to the Orders (*Form No. 1*) must be adhered to in all ordinary cases (*Order 27*).

Restoring
petition to
the paper.

3. When a petition has been put into the paper for hearing, and by reason of the parties not being ready, or for any other cause, the judge allows it to stand over generally, it may be put into the paper for a subsequent day, without any application to the court or judge, on the petitioner or his solicitor applying for that purpose to the secretary of the Lord Chancellor or Master of the Rolls (as the case may be), and notice of the appointment of such subsequent day shall be given by the petitioner, or his solicitor, two clear days before the day fixed to the other parties entitled to appear on such petition.

This order is entirely new, enabling the petition to be restored to the paper immediately after it has become ripe for hearing, subject only to the 2 clear days' notice to the other parties entitled to appear and be heard.

Notice
under sec-
tion 26.

4. The notice required to be given by the 26th section of the Act if given before the hearing (or if given after the hearing, and the judge shall not otherwise direct) may, without any other direction of the court, be given within the jurisdiction of the court, except in the case of a person of unsound mind, not so found by inqui-

sition, by delivering to the person to be served a notice (in the form No. 3 in the Appendix hereto) with such variations as circumstances require, and the time to be specified in such notice for the person served to deliver or leave a notification shall—(a.) in case the person to be served is a guardian of an infant, be such as shall be directed by the judge in the order appointing the guardian, and in case the person to be served is a married woman, or a committee of a lunatic, not less than 28 clear days after the service; (b.) and in other cases not less than 14 clear days after the service. In case the person to be served is of unsound mind, not so found by inquisition, or out of the jurisdiction of the court, or it is desired to serve such notice on any person within the jurisdiction of the court in any other manner than above provided, an application shall be made at Chambers *ex parte* by the petitioner for directions as to the manner in which such notice shall be given, and as to the time to be specified in such notice within which the notification is to be made by the person served.

This section will be more easily understood if presented in a tabulated form. The time for delivering the notification is :—

A. Within the jurisdiction—

- | | |
|---|--|
| 1. By guardian of infant . . . | } As the Court shall direct in the order appointing him. |
| 2. By married woman . . . | |
| 3. By committee of lunatic . . . | } 28 clear days after service of the notice. |
| 4. In all other cases (except in the case of a person of unsound mind not so found) | |
| | } 14 clear days after service of the notice. |
| | |

B. Out of the jurisdiction. .	} As the Court shall
C. By a person of unsound mind, not so found.	
D. In special cases within the jurisdiction	
	direct upon an <i>ex parte</i> application at chambers.

In *Re Menburn's Settled Estates* (22 W. R. 752), the Court refused leave to serve a respondent out of the jurisdiction.

For form of summons for directions under this order, see Appendix to the Orders (*Form* No. 2), and for form of notice, *ibid.* (*Forms* Nos. 3 & 4).

Guardian
of infant.

5. Where it is desired that any guardian of an infant shall make or consent to any application to the Court under the Act, or make any notification respecting any application to the court, or that notice may be given to any such guardian on behalf of an infant, the court may appoint a guardian to such infant for the purposes of the Act, and an application for such appointment may, after the petition is presented, be made at chambers by the petitioner by summons. And if an infant is the petitioner the petition may be presented by the infant by his next friend, and after the petition has been presented and answered, and a guardian appointed, the word "guardian" shall be substituted in the petition for the words "next friend," and the name of the guardian (if the next friend and guardian shall not be the same person) for the name of the next friend.

The practice upon the appointment of guardians has been entirely changed by this Order.

The guardian was formerly appointed upon a summons taken out in the name of the infant by a next friend in the form used for originating proceedings in chambers intituled in the same manner as the petition

or intended petition. Now the summons will in all cases be taken out by the petitioner.

Formerly, if the infant was the petitioner, the guardian had to be appointed before petition presented. Now the petition is first presented on behalf of the infant by his next friend; the guardian is then appointed, and the petition amended by substituting him for the next friend.

Again, if the infant was not the petitioner, the guardian might be appointed either before or after petition presented. Now he must be appointed after the presentation of the petition.

Compare for the former practice the Regulations of August, 1857, Rule 21.

See the ensuing Orders 6—12 as to service of the notice, special directions, and the evidence required upon the summons, and for forms of summonses, Appendix to these Orders (*Forms 5 & 6*).

6. In the case of a lunatic or infant tenant in tail by his committee or guardian applying or consenting to an application, or giving a notification respecting an application, an application may be made at chambers by the petitioner after the petition is presented that such committee or guardian may be directed to so apply or consent, or give a notification, and in the case of an infant such application may be combined with the application to appoint a guardian.

Special directions under section 49.

This application used under the former practice to be made by the guardian or committee. The above Order directs it to be made by the petitioner.

7. In cases where the committees or guardians of lunatic or infant tenants in tail shall be served with notice of the application in pursuance of the 26th section of the Act, an application may be made at chambers by the petitioner, before the

expiration of the time specified in such notice, that such committees or guardians may notify that they either assent to or dissent from such application, or submit their rights or interests so far as they may be affected by such application to be dealt with by the court.

The time specified in a notice to a committee of a lunatic is 28 days (see *ante*, Order 4); in a notice to a guardian of an infant, such time as is fixed by the order appointing the guardian. The application may be made before the expiration of this time.

The summons under either Order 6 or Order 7 must be served on the committee or guardian as the case may be (Order 9).

See as to the evidence on the return of a summons under either of these Orders, Orders 11 & 12, *post*.

Orders 6, 7, 9, 11 and 12 are made under section 49 of the Act 9 Vict.

Service on
guardian
under
Order 5.

8. Upon an application to appoint a guardian to an infant for any such purpose as aforesaid, the summons shall be served upon the parent, testamentary guardian, or guardian appointed by the Court of Chancery or the Chancery Division of the High Court of Justice, of the infant, if there be any such parent or guardian, unless the court or judge shall dispense therewith.

As the issuing of the summons is no longer in the hands of the infant's friends, but in those of the petitioner, it is necessary to serve the actual guardian, whether natural, testamentary, or judicially appointed.

See Order 5, *ante*, and for the evidence, Order 10.

Service on
committee
or guardian
under Orders
6 and 7.

9. Upon any application that a committee or guardian of a lunatic or infant tenant in tail may be directed to make or consent to any application on behalf of such lunatic or infant, or to notify that the lunatic or infant assents to or

dissents from such application, or submits his rights or interests so far as they are affected by such application to be dealt with by the court, the summons shall be served on the committee of such lunatic, or the guardian appointed or proposed to be appointed of such infant, for such purpose.

The summonses here referred to are those under *Orders 6 & 7, ante*.

The evidence on the return of this summons is to be such as provided for by *Orders 11 & 12*.

10. Upon an application to appoint a guardian of an infant, the following facts shall be proved :— Evidence on appointment of guardian.

1. The age of the infant.
2. Whether he has any parent, testamentary guardian, or guardian appointed by the Court of Chancery or the Chancery Division of the High Court of Justice, and, if so, whether such parent or guardian has any interest in the application, and if he has the nature of such interest, and whether or not adverse to the interest of the infant.
3. Where and under whose care the infant is residing, and at whose expense he is maintained.
4. In what way the proposed guardian is connected with the infant, and why proposed and how qualified to be appointed.
5. That the proposed guardian has no interest in the application, or if he has the nature of his interest, and that it is not adverse to the interest of the infant.
6. The consent of the guardian to act.

This Order follows with a few verbal alterations Rule 21 of the Regulations of August, 1857, which, however,

further required evidence as to the nature of the intended application to the Court. This has now become unnecessary, as in every case the petition is presented before the appointment of a guardian (*Order 5*).

Evidence
in case of
lunatic
tenant in
tail.

11. Upon an application that a committee of a lunatic tenant in tail may be directed to make or consent to any application, or to give any notification respecting any application, the authority of the judge or judges entrusted with the care and commitment of the custody of the persons and estates of lunatics to such committee to act on behalf of the lunatic shall be produced, and if it shall appear thereby that such judge or judges are of opinion that it is proper and consistent with a due regard for the interest of the lunatic that the committee shall make or consent to the application or give any specific notification respecting the application, such authority shall, unless the court or judge shall for any special reason require further evidence, be sufficient evidence upon which the court or judge may direct the committee to act in conformity with such authority.

This Order adopts the practice as laid down in *Re Woodcock's Trusts* (L. R. 3 Ch. App. 229). See note to sec. 49 of the Act.

12. Upon an application that a guardian of an infant tenant in tail may be directed to make or consent to any application or to give any notification respecting any application, evidence is to be produced to satisfy the judge that it is, and the guardian is to make an affidavit that he believes that it is, proper and consistent with a due regard for the interest of such infant that such direction shall be given.

This Order corresponds to the 22nd Rule of the Regulations of August, 1875.

13. The examination of a married woman under sections 50 and 51 of the Act may be taken at any time after the petition is presented and answered. Examination of married woman.

14. When it is desired that a married woman resident within the jurisdiction of the Court shall be examined otherwise than by the Court, a solicitor who is a perpetual commissioner to take acknowledgments of deeds by married women may be appointed for that purpose by the judge at chambers in the Form No. 7 in the Appendix hereto without summons or order, upon the request of the petitioner and a certificate of the solicitor for the petitioner in the Form No. 7 in the Appendix hereto that the person to be appointed is not a solicitor for the petitioner, or for any party whose concurrence or consent to the application is required, but where an examination by such solicitor will cause unreasonable expense, delay, or inconvenience, or where the married woman is resident out of the jurisdiction of the Court, an application by summons may be made *ex parte* by the petitioner at chambers to appoint a solicitor if such woman is resident within the jurisdiction of the Court, and if not so resident a person, whether a solicitor or not, to take such examination.

Order 13 settles the disputed point as to the proper time for taking the examination (*Re Foster's Settled Estates*, 1 De G. & J. 386; 26 L. J. Ch. 836; *Re Manson's Settled Estates*, 24 Beav. 220; and *Re Parker*, 39 L. J. Ch. 220). The two former of these cases were in favour of its being taken after the petition had been

presented and answered and carried into chambers, but before any judicial step being taken upon it. The latter case upheld the view that the examination might be taken at any time before the Order.

Order 14, while retaining the former practice in cases where the married woman is resident out of the jurisdiction, or where special circumstances render it desirable to adhere to it, substitutes a shorter procedure in all cases within the jurisdiction which are devoid of difficulty of any kind. One examiner will now be able to take the examination of all the married women interested in the application, or of as many of them as it may be found convenient (*Forms 7 & 9, and Order 27*).

Evidence of propriety of the application.

15. Upon every petition the Court shall be satisfied by sufficient evidence that it is proper and consistent with a due regard for the interests of all parties entitled under the settlement that the powers should be exercised; and it shall be stated in the affidavit why and upon what ground it is deemed to be so.

This Order is new. It follows the condition imposed by the sections of the Act which confer the powers (*sections 4, 16, and 17*).

Evidence of service on trustees.

16. Upon every petition where there are any trustees seised or possessed of any estate in trust for any of the persons whose consent or concurrence to or in the application is required, evidence is to be produced that notice of the application has been served on such trustees.

This Order is new, and is in accordance with section 30 of the Act.

The notice to trustees is required to be in the form given in the Appendix to these Orders (*Form No. 12*).

Evidence prior to

17. Upon every petition evidence shall be produced to satisfy the Court that neither the

applicant nor any party entitled has previously applied to either House of Parliament for a Private Act to effect the same or a similar object, or if any such application has been made that the same was not rejected on its merits or reported against by the judges to whom the Bill may have been referred.

The 21st Rule of Order 41 of the Consolidated Orders, with which this Order corresponds, did not follow so closely as the present the section under which it was made (*section 32*). See *Re Wilson's Estate Bill*, quoted in the note to the section, *ante*.

18. If upon the hearing of any petition the Court shall be of opinion that notice ought to be served on any person who shall not have been served, or that notice of the application ought to be inserted in any newspaper, the Court shall give directions accordingly, and the petition shall stand over generally or to such time as the Court shall direct.

Notices and advertisements.

This Order is new, and is made under section 31.

As to service of notice, see sections 26 and 27 of the Act.

As to advertisements in newspapers, see section 31 of the Act. The effect of the Order upon the practice as to advertisements is to leave the question whether or not notice should be given in this manner to be decided at the hearing. Formerly the first step taken after the presentation of a petition was to issue a summons for directions in what newspapers the notices required by the Act were to be inserted (Order 41, Rule 17 of the Consolidated Orders). The petition was produced on the return of the summons, and the judge's direction was written on the petition and signed by his chief clerk. Now the directions will be given upon the

hearing of the petition, and a form of advertisement to be used is appended to these Orders (see *Form No. 13*). This form does not require the name or address of the petitioner to be given, but only the name and address of his solicitor, thereby obviating the risk of inaccuracies which were before held to necessitate re-advertisement. The title of the advertisement must follow the title of the petition (*Order 2, ante*, and see the Form). As in the few cases in which notice may in future be directed, the Court will doubtless be guided by previous decisions, (this being the only Order as to advertisements), some of the most important authorities are here referred to.

The object of the advertisements being to give all persons interested full information, the Court will dispense with literal compliance with the Order where the main purpose of the order is substantially fulfilled (*Re Whiteley's Settled Estates*, 8 L. R. Eq. 574).

In *Re Bateman's Settled Estates* (13 W. R. 513), the Lords Justices held that the title of the advertisements must correspond exactly with the title of the petition, and that the omission from the former of the words "in the parish of" and "now unoccupied," which occurred in the latter, was a fault that necessitated re-advertisement. But the strictness of this rule has been relaxed by the V.-C. Malins in cases where the omission or misdescription could not deceive or mislead any one—thus the omission of the words, "in the parish of" (*Re Nunc's Settled Estates*, W. N. 1867, p. 109), the substitution of "Middlesex" for "Nottingham" (*Re Hemsley's Settled Estates*, 16 L. R. Eq. 315), the description of "a dwelling-house and shop" as "premises" (*Re Bicknell's Settled Estates*, 14 L. R. Eq. 467), are faults which have been regarded as immaterial.

When the question arises whether or not, owing to intervening circumstances, the advertisements already issued are insufficient, and re-advertisement has become necessary upon the amendment of the petition, the Court takes into consideration the peculiar circumstances

MAN OF THE FUTURE

Kilmorey's Settled Estates, 26 W. R. 54); and see *Ex parte Puxley*, 2 Ir. Rep. Eq. 237.

An order for the insertion of advertisements in certain newspapers for three *successive* weeks, is sufficiently complied with, although the interval between two of the advertisements is more than a week (*Browne v. Pennfather, Re Monkton Furlough Estate*, 4 N. R. 221).

Leave to be heard]

19. When the Court shall at the hearing have directed notice of any application to be inserted in any newspapers, any person may, within the time specified in the notice, apply to the Court by motion, either *ex parte* or upon notice to the petitioner, for leave to be heard in opposition to or in support of the application, but if such motion shall be made *ex parte* and the Court shall think fit to give such leave, it shall be subject to such Order as the Court shall think fit to make as to costs.

A date before which the motion must be made is now to be fixed by the advertisement, whereas by the old practice the limited time was 7 days after the appearance of the last advertisement (O. 41, R. 17 of the Consolidated Orders). The leave was formerly given on an *ex parte* motion. Now if made *ex parte*, the Order must be served on the petitioner's solicitor (Order 21), and may be made upon conditions as to costs.

No mention is here made of renewing the old practice of granting special leave to make a motion under section 31 after the expiration of the limited time, but extension of time may be obtained under Order 57, R. 6 of the Orders under the Judicature Acts incorporated in these Orders by Order 26. Such special leave was granted in cases where some reason or excuse was alleged why the application was not made within the specified time, *e.g.*, that the party applying was resident out of the jurisdiction (*Re Merry's Settled Estates*, 14 W. R. 665).

20. Any such person having obtained leave under the last preceding Order shall be at liberty, upon reasonable notice, to inspect and peruse the petition at the office of the solicitor for the petitioner, upon payment of a fee of 13s. 4d. on each inspection, and shall be entitled (either without or after such inspection) to be furnished with a copy of such petition upon such application, terms, and conditions as are provided by Rules 8, 9, 12, and 13 of Order V. of the Additional Rules of Court, under the Supreme Court of Judicature Act, 1875, dated 12th August, 1875.

Inspecting
and obtain-
ing copy of
petition.

The rules referred to are as follows :—

8. "Where any party is entitled to a copy of any deposition, affidavit, proceeding, or document filed or prepared by or on behalf of another party which is not required to be printed, such copy shall be furnished by the party by or on whose behalf the same has been filed or prepared.
9. "The party requiring any such copy, or his solicitor, is to make a written application to the party by whom the copy is to be furnished, or his solicitor, with an undertaking to pay the proper charges, and thereupon such copy is to be made and ready to be delivered at the expiration of 24 hours after the receipt of such request and undertaking, or within such other time as the Court or Judge may in any case direct, and is to be furnished accordingly upon demand and payment of the proper charges.
12. "The name and address of the party or solicitor by whom any copy is furnished is to be endorsed thereon in like manner as upon proceedings in court, and such party or solicitor is to be answerable for the same being a true copy of the original, or of an office copy of the

original of which it purports to be a copy, as the case may be.

13. "The folios of all printed and written office copies, and copies delivered or furnished to a party, shall be numbered consecutively in the margin thereof, and such written copies shall be written in a neat and legible manner on the same paper as in the case of printed copies."

Service of
ex parte
order for
leave to be
heard.

21. Any Order made on an *ex parte* motion giving leave to such person to be heard on any application shall be served on the solicitor for the petitioner.

Trustees,
&c., entitled
to inspection
or copy
of petition.

22. Any person served with a notice, pursuant to the 26th section of the Act, requiring him to notify whether he assents to or dissents from the application or submits his rights or interests so far as they may be affected by such application to be dealt with by the Court, and any trustee or other person served with notice pursuant to the 30th section of the Act, shall be at liberty, upon reasonable notice to the petitioner's solicitor, to inspect and peruse the petition without payment of any fee, and he shall be entitled to be furnished with a copy thereof upon such application, terms, and conditions as are provided by Rules 8, 9, 12, and 13 of Order V. of the Additional Rules of Court, under the Supreme Court of Judicature Act, 1875, dated 12th August, 1875.

See these rules appended to Order 20, *supra*.

Indorsement
or registra-
tion of
notice.

23. In all cases in which land in a register county or district is affected by the exercise of any powers conferred on the court by the Act, and the court shall direct notice to be recorded,

pursuant to the 33rd section of the Act, such notice may be given by directing a memorial of the Order to be registered. And in all cases in which the court shall not think it practicable or expedient that notice under the said section should be recorded as therein mentioned, the Order shall state that no record of the Order need be made.

This Order corresponds with Rule 24 of the 41st Order of the Consolidated Orders, and is made under sec. 33 of the Act, *q. v.* The old Order further empowered the judge, if he thought fit, to require that the document or documents indorsed in pursuance of his order should be produced in Court for his inspection. This part has now been omitted. The provision that the dispensing with such notice shall be specially mentioned in the Order is new.

For instances of orders directing indorsement of Notice, see note to sec. 33, and *Re Boyd's Settled Estates* (8 Ir. R. Eq. 76), given among the Forms at the end of the book.

24. Every Order shall state, in addition to the names of the petitioners, the names of the persons other than the petitioners who concur or consent or to whom notice of the application has been given, or who (under Order 19) may have obtained leave to be heard in opposition to or in support of the application, and whether any notification was received from the persons to whom notice has been given, and if any has been received the purport thereof, and also the names of the persons, if any, notice to whom has been dispensed with, and whether the Order is made subject to any and what rights, estate, or interest of any person whose concurrence or consent has been refused, or who shall not or shall not be deemed to have submitted his Order.

rights or interests to be dealt with by the court, or whose rights or interests ought, in the opinion of the court, to be excepted.

Leases, conditions, &c.

25. In cases where the court authorises a lease the Order shall direct that the lease shall contain such conditions as are required by the Act, and such other covenants, conditions, and stipulations as the court shall deem expedient with reference to the special circumstances, or may direct the same to contain such covenants, conditions, and stipulations as may be approved by the judge at chambers without directing the lease to be settled by the judge.

By sec. 4 the powers given by the Act are to be exercised "subject to the provisions and restrictions in the Act contained." Sec. 5 authorizes the requirement of special covenants, conditions, and stipulations. Secs. 14 and 15 provide that leases shall not be settled by the judge.

Time.

26. The Rules 1, 2, 3, and 6 of Order LVII. (as to time) in the Schedule to the Supreme Court of Judicature Act, 1875, shall be applicable to these Orders, and to all proceedings under the Act.

The rules referred to are as follows :—

1. "Where by these Rules or by any judgment or order given or made after the commencement of the Act, time for doing any act or taking any proceeding is limited by months not expressed to be lunar months, time shall be computed by calendar months.
2. "Where any limited time less than six days from or after any date or event is appointed or allowed for doing any act or taking any proceeding Sunday, Christmas Day, and Good

Friday shall not be reckoned in the computation of such limited time."

An exception to this rule is made by *Order 2, ante*, under which, in the computation of eight days, Sundays and other days on which the offices are closed are not to be reckoned.

3. "Where the time for doing any act or taking any proceeding expires on a Sunday or other day on which the offices are closed, and by reason thereof such act or proceeding cannot be done or taken on that day, such act or proceeding shall, as far as regards the time of doing or taking the same, be held to be duly done or taken if done or taken on the day on which the offices shall next be open."

The Rules omitted from the above Order, viz., Rule 4 and 5, refer to the long vacation, and direct that no pleading shall be amended or delivered in the long vacation, and that the long vacation shall not be reckoned in the computation of time for filing, delivering, or amending any pleading.

6. "A Court or a judge shall have power to enlarge or abridge the time appointed by these Rules or fixed by any order enlarging time for doing any act or taking any proceeding upon such terms (if any) as the justice of the case may require, and any such enlargement may be ordered although the application for the same is not made until after the expiration of the time appointed or allowed."

27. The forms set forth in the Appendix Forms. hereto shall be adhered to, subject only to such variations as may be necessary to meet the circumstances of the case or direction of the court.

This Order is imperative in its terms. The Forms referred to will be found among the Forms at the end

of this book, where they are distinguished by larger type, an Index to them being given after these Orders.

Saving of
existing pro-
cedure
where no
special pro-
vision is
made.

28. In all cases not provided for by the Act, or these Orders, the existing forms and mode of procedure and general practice of the court on similar proceedings shall apply to proceedings under the Act.

The several points of practice not provided for by these Orders are noticed in the Summary of the Practice, *ante*.

Fees.

29. The fees and allowances to solicitors of the court in respect to proceedings under the Act shall be such as are provided by Order VI. of the Additional Rules of Court under the Supreme Court of Judicature Act, 1875, dated 12th August 1875, and are applicable to such proceedings, and solicitors shall be entitled to charge and be allowed for a request and certificate under the 14th Order (of these Orders), and for attendances at the judges' chambers to procure the appointment of an examiner thereon, a fee of 13s. 4d. if the lower scale of fees is applicable, and 17. 1s. 0d. in other cases.

Stamps.

30. The fees to be taken by the officers of the court in respect to proceedings under the Act shall be such as are provided by the Orders under the Supreme Court of Judicature Act, 1875, dated 28th October 1875, and are applicable to such proceedings; and every request under the 14th Order (of these Orders) shall bear a stamp of 2s. if the lower scale of fees is applicable, and 3s. in other cases.

Petition—
address for
service.

31. Every petition under the Act shall set forth the name, address, and description of the petitioner, and also a place within three miles

from the site of Temple Bar, London, where he may be served with any Order of the court or of the judge in chambers, or notice relating to the subject of such petition.

This Order corresponds to Order 41, Rule 14, of the Consolidated Orders, adopting the form of the Rules under the Judicature Acts as to an address for service.

The name, address, and description of the petitioner need appear only in the petition. In other documents, *e.g.*, notices, advertisements, etc., this is no longer necessary. The necessity which previously existed for including these particulars in every public and private notice required by the Act was a very fertile source of mistake, and a misdescription in some trifling kind often involved the additional expense of re-issuing such notices.

The Court will dispense with literal compliance with the Order where the main purpose of the Order is substantially fulfilled (*Re Whiteley's Settled Estates*, 8 L. R. Eq. 574). See also *Re Bourne's Estate*, 26 W. R. 1115; and *Re Snell's Settled Estate*, 19 W. R. 1000. The address of the petitioner's solicitor is now all that is requisite in advertisements or notices (see the Forms in the Appendix).

32. The judge in person sitting in court or in chambers in the case of any petition may by special Order dispense with all or any of the preceding orders so far as they are applicable to such petition in any case in which he shall think fit, and upon such terms and conditions (if any) as he may deem proper.

Power to
dispense
with the
Order.

It was held in *Re Hargreave's Settled Estates* (7 W. R. 156), that the regulations made under the Act merely pointed out the manner in which the several proceedings under the Act might be taken for the sake of convenience, and were not absolutely obligatory in

every case, the Court being able in its discretion to dispense with a strict compliance with them. The effect of the above Order is to place the "Settled Estates Act Orders, 1878," upon the same footing as the now obsolete Regulations. See also *Re Longstaff's Settled Estates*, 1 Dr. & Sm. 142.

Date of
operation. 33. These Orders shall come into operation on the 7th day of January 1879, and shall apply to any petition presented on or after that date.

Short title. 34. These Orders may be cited as "The Settled Estates Act Orders, 1878."

CAIRNS, C.
G. JESSEL, M.R.
RICHARD MALINS, V.C.
JAMES BACON, V.C.
CHARLES HALL, V.C.
EDWARD FRY.

December 1878.

APPENDIX.

The Appendix to the Orders contains a number of APPENDIX.
Forms, which are embodied in the collection of Forms
at the end of this book, being distinguished by being
printed in larger type, and which correspond respec-
tively to them in the following manner :—

	Form
No. 1. Form of Title and other proceedings . . .	1
„ 2. „ Summons for directions as to ser- vice of notice pursuant to sec. 26 of the Act	17
„ 3. „ Notice pursuant to sec. 26 of the Act	18
„ 4. „ to accompany Notice pursuant to sec. 26 of the Act	19
„ 5. „ of Summons for appointment of a Guardian of an Infant, and for leave for the Guardian to make or consent to an application . . .	33
„ 6. „ Summons for Appointment of a Guardian of an Infant to be served with Notice of an applica- tion, and for leave for the Guar- dian to deliver a notification pursuant to such Notice . . .	34
„ 7. „ Request to appoint a person to examine a Married Woman . . .	38
„ 8. „ Summons to appoint persons to examine Married Women . . .	39
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<u>APPENDIX.</u>		Form
	No. 10 Form of Certificate of Examination of Married Women making or assenting to an Application	41
„ 11. „	Affidavit verifying Examination	42
„ 12. „	Notice pursuant to the 30th sec. of the Act	23
„ 13. „	Notice to be inserted in Newspapers if directed pursuant to the 31st sec.	24

FORMS OF PETITIONS, ORDERS, ETC. UNDER THE ACT.

*The following is Form No. I. of the Forms
appended to the "Settled Estates Act Orders,
1878."*

*In the High Court of Justice,
Chancery Division,
The Master of the Rolls
(or the Vice-Chancellor Malins
or other Vice-Chancellor).*

1. TITLE OF
PETITION
AND OTHER
PROCEED-
INGS.

*In the Matter of Estates settled by
A. B. (or A. B. and others) by
will dated (or deed dated
) , consisting of certain
lands (or messuages or tenements)
in , in the parish of ,
in the county of
And in the Matter of the "Settled
Estates Act, 1877."*

[Title Form, No. 1.]

2. PETITION.
Formal
parts.

To Her Majesty's High Court of Justice.

The humble Petition of [tenant for
life], of [address], esquire, [or other
description, as the case may be].

Showeth as follows :

1. [Set out the limitations of the will or settle-
ment, as the case may be, settling the estate
proposed to be dealt with.]

Introductory
statements
in all peti-
tions

2. [*State death of testator, probate, appointment of new trustees, marriages of persons interested and settlements made on their marriages affecting the settled estate, and any other material facts relating to it.*]
3. [*Set out a detailed description of the property proposed to be dealt with sufficient to identify the same, or refer to a schedule or to a plan annexed to the petition.*]

Special statements in particular cases.

Provisional agreement for lease or sale.

4. By an agreement, dated the _____ of _____, and made between _____ of the one part, and _____ of the other part, it was agreed, subject to the sanction of this Honourable Court thereto being obtained, that [*set out the material parts of the agreement*].

The said agreement is a highly favourable agreement, and for the benefit of all persons interested in the hereditaments comprised therein. Your petitioner submits that the same should receive the sanction and be carried into effect under the order of this Honourable Court.

Mines.

The lands and hereditaments above mentioned contain [*description of minerals*], which are believed to be of great value and which have never been worked. It is very desirable and for the benefit of all persons interested, that a general power of leasing the said lands and hereditaments for the purpose of working the said mines be vested in [*names of the trustees*].

Building leases.

The above-mentioned land is situate in the immediate neighbourhood of the town of _____, and is advantageously situate for building purposes. There is a great demand for land for building sites in that portion of the town, and favourable offers have been made to your petitioner for

grants of building leases. It is proper and consistent with a due regard for the interests of all persons entitled under the said will that general powers of granting building leases of the said land should be vested in the trustees of the said will for the time being.

It is the custom of the country in which the above-mentioned hereditaments are situate to grant building leases for terms of not less than years, and leases of the said hereditaments could not be granted for a shorter term on advantageous terms. Your petitioner submits that it would be for the benefit of all persons interested in the said hereditaments that a general power of granting building leases for terms not exceeding years, should be vested in the trustees for the time being of the said will. Custom of the country.

The above-mentioned hereditaments would, if Sale. sold, realize a considerable sum, the value of property in the vicinity having of late years greatly improved, and your petitioner believes that a sale of the same might be advantageously effected at the present time, and that such sale would be for the benefit of all persons interested in the said hereditaments under the said will.

5. No application has been made to either House of Parliament for the purpose of effecting the object of this petition or any similar object. *General statements in all petitions*
6. Your petitioner may be served with any order of this Honourable Court, or any notice relating to the subject of this petition at the office of , the solicitor for your petitioner in the matter of this petition [*or other address for service within*

3 miles from the site of Temple Bar,
London].

Prayer.

Your petitioner therefore humbly prays as follows :

Particular
lease.

That for the purposes hereinbefore mentioned an order may be made by this Honourable Court, that [*state effect of order sought, e.g., as follows :*]
the agreement hereinbefore mentioned for a lease of the above-mentioned hereditaments to , may be carried into effect ;

Mining
lease.

or, general powers to grant leases of the [*minerals*] lying within, under, or upon the lands above mentioned, may be vested in the trustees of the said will for the time being of the will of the said deceased, in conformity with the said Act, and subject to the provisions and restrictions in the said Act contained ;

or, general powers of granting building leases of the above-mentioned land, for terms not exceeding years, in conformity with the said Act, and subject to the provisions and restrictions therein contained, may be vested in the trustees for the time being of the said will ;

Sale.

or, the above-mentioned hereditaments may be sold under the direction of this Honourable Court, and [*if so desired add the proposed mode of dealing with the purchase money, e.g.*] that the said A. and B., the trustees of the said settlement, be at liberty, without any further application to the Court, to apply the proceeds of such sale to one or more of the purposes and in the manner provided by the above-mentioned Act [*or, may be ordered to hold the*

moneys arising from such sale upon the trusts of the said settlement].

That all proper provisions may be made and directions given for effecting the purposes ^{General clauses.} hereinbefore mentioned.

That the costs and expenses of your petitioner ^{Costs.} and of all other persons served with this petition, of and incident to this application, may be taxed by the taxing master, and the amount of such costs when so taxed be a charge on the said hereditaments [or be raised by a sale or mortgage of a sufficient part of the said hereditaments ; or be a charge upon the hereditaments included in the same will, and subject to the same limitations ; or be paid by the trustees of the said will out of the money to arise by such sale ; or be raised and paid by the said trustees out of any funds that are now or may hereafter be in their hands, subject to the trusts of the said will].

or, generally,

That the costs of all parties of and incident to this application may be provided for.

Or that this Honourable Court will make such further or other order as the nature of the case may require.

And your petitioner will ever pray, etc.

It is intended to serve this petition upon
[names of respondents].

If it is desired to pray in the petition for leave to lay out roads, etc., or for the appointment of trustees, or for any other particular, the prayer should follow the wording of the orders which are here appended.

Petition
for leave to
bring pro-
ceedings for
protection
(sec. 17).

[*Title and formal parts as in Forms No. 1 & 2.*]

1. [*State the Settlement.*]
2. [*State the facts of the particular case, as in the last precedent.*]
3. [*Set out the circumstances which have rendered proceedings for protection necessary, e.g.*]

A Bill has recently been presented to the House of _____, by _____, for the construction of a railway from _____ to _____. The proposed line of railway is projected to pass through the _____ estate, being part of the estates subject to and comprised in the aforesaid settlement, and would, if constructed, work great injury to the said estate, which would thereby be considerably deteriorated in value. No compensation paid by the company could adequately represent the loss to the settled property. It is, therefore, highly desirable and necessary that the sanction of the Court should be given to your petitioner to oppose the passing of the said Bill, and that provision should be made for the costs of such opposition [*or as the case may be*].

4. [*General statements, as in the last precedent.*]

Your petitioner, therefore, humbly prays as follows :

Sanction for
proceedings.

That the sanction and authority of this Honourable Court may be given to your petitioner to institute the proceedings hereinbefore mentioned, as necessary for the protection of the settled estates, subject to and comprised in the said indenture of settlement, dated the _____ of _____.

Costs.

That the costs and expenses in relation to such proceedings may be ordered to be raised and paid by means of a mortgage of [*or charge upon*] the settled estates,

[or a sale of a competent portion of the said settled estates, or out of the said sum of £ , representing moneys liable to be laid out in the purchase of hereditaments to be settled in the same manner as the said settled estates].

That this Honourable Court may make such further or other order as the nature of the case may require.

This Court being of opinion that it is proper and consistent with a due regard for the interests of all persons entitled under the said will, &c. [or the said indenture of settlement, dated, &c.], that leases of the, &c. [*mention the earth, coal, stone, or mineral to be demised*], lying within, under, or upon (the estate, in the petition mentioned, being part of) the settled estates devised by the said will [or comprised in the said settlement], and situate in the parish of, &c., should be authorized, subject as hereinafter mentioned, and that it is expedient that general powers to grant such leases should be vested in the trustees of the said will [or settlement] for the time being. Let power to grant such leases [or general powers of leasing the said earth, &c., in conformity with the said Act, and subject to the provisions and restrictions therein contained] be vested in the said A. and B. (and the survivor of them) and other the (trustee or) trustees for the time being of the said will [or settlement] such powers to be exercised with the consent of the tenant for life, if any, for the time being in possession of the said estates, who has attained the age of twenty-one years, or if there shall be no such tenant for life, then without such consent.

ORDERS.

4. SECS.

4—15.

Leases.

Order

authorizing

mining

leases.

See forms of order, Re Reveley, 11 W. R. 744; and Re Lord Wallace, W. N. 1869, p. 67; and Tolson v. Sheard, 5 Ch. D. 20, cited ante in the note to section 13 of the Act.

The same form will, mutatis mutandis, be suitable for orders authorizing building or other leases.

5. Particular lease.

And this Court being of opinion that it is proper, &c. [*continue as above*], that a lease of the messuage or tenement, situate at _____, being part of the settled estates comprised in the said will [*or settlement*], should be authorized, subject as hereinafter mentioned. Let power to grant such lease in conformity with the said Act, &c., be vested in, &c. [*as above*].

And see the order in Re Chambers, 28 Beav. 655.

6. Order confirming agreement for a lease.

And this Court being of opinion, &c., that the contract for a lease, dated, &c., in the petition mentioned, should be carried into effect, subject as hereinafter mentioned, let the said contract be carried into effect accordingly, but such lease is to be subject to the provisions and restrictions in the said Act contained.

7. Sec. 13. Order appointing trustees.

Let the said M. and N. be appointed trustees for the purpose of exercising such powers of leasing [*or receiving the money to be set aside out of the rents and payments to be reserved on the leases to be granted as aforesaid; or receiving the money to arise by the sale hereby directed*], and any of the persons interested in the said hereditaments [*or the money to arise by the said sale*], or the trustees or trustee for the time being are to be at liberty from time to time to apply in

Chambers for the appointment of a new trustee or new trustees as there shall be occasion.

But the leases so to be granted are, subject and in addition to the conditions required to be observed by the said Act, to contain such covenants, conditions, and stipulations, as the judge shall approve, and are to be settled by the judge [or as may be approved by the judge at Chambers].

8. SEC. 14.
Condition that lease be settled by the Court (if specially ordered or desired by the parties).

See *Order 25*.

Take notice that this Honourable Court will be moved before [*name of the judge*] on the day of , 18 , or so soon thereafter as counsel can be heard, by Mr. , as counsel on the part of [*names of the petitioners*], the petitioners named in the order made in this matter on the day of , 18 , that the words following, that is to say [*follow the words of the order*], may be struck out of the said order, and that the said order may be read as if such words had never been contained therein.

9. SEC. 15.
Notice of motion to strike out the above condition.

And this Court being of opinion, &c. [*as in Form 4, ante*] that a sale should be authorized of the said premises mentioned in the title to this order, and that the said agreement, dated the of , is a proper agreement for such sale, doth order that the said contract be carried into effect accordingly, with the approbation of the judge. And It is ordered that , of , do execute the conveyance of the said piece of land to the said [*purchasers*]. And It is ordered that the said [*purchasers*] do pay the purchase-

10. SEC. 16.
Order for sale.

Confirmation of contract.

money of £ into Court, to the credit of "Ex parte A. B. [*the tenant for life*], in the matter of the Settled Estates Act, 1877." And It is ordered that the same when so paid in be invested in the purchase of [*as the case may be*]. And It is ordered that the dividends from time to time as they accrue due on such annuities [*or as the case may be*], and upon so much thereof as shall remain after sale of part thereof, for the payment of the costs hereinafter mentioned, be paid to the petitioner, during his life, or until further order. And It is ordered that upon the said sum of £ being paid into Court as aforesaid, the said do execute a proper conveyance of the said piece of land to [*the purchaser*]. And It is ordered that it be referred to the taxing master to tax the costs of the petitioners of and incident to this application as between solicitor and client. And It is ordered that so much of the annuities [*or as the case may be*] so to be purchased as aforesaid as shall raise such costs when so taxed, be sold, and that out of the money to arise from such sale the said costs when taxed be paid to , the solicitors for the petitioners. And It is ordered that notice of this order be indorsed on the probate of the will of the said .

11. Order
for sale.

And this Court being of opinion, &c. [*as above*] that a sale should be authorized, &c. [*as above*, or of the timber mentioned and described in the valuation, marked and referred to in the affidavit of B., and growing on (&c., part of) the settled estates devised by, &c., or subject to, &c., as above]. Let the said estate [*or timber*] be sold accordingly, with the approbation of the judge, subject to the provisions and restrictions in the said Act contained.

[*If there are incumbrances, add*] free from the incumbrances, if any, of such of the incumbrancers as shall consent to the sale, and subject to the incumbrances of such of them as shall not consent.

[*If minerals are to be excepted.*] Let the said estate, except [*mention the minerals excepted*], lying within, under, or upon the said estate, be sold, &c. [*as above*].

12. SEC. 10.
Minerals
excepted.

The Court being of opinion, &c. [*as above*], and that the contract for sale, dated, &c., in the petition mentioned, should be carried into effect. Let the said contract be carried into effect accordingly.

13. Confir-
mation of
contract.

This Court being of opinion that the proceedings hereinafter directed are proper and consistent with a due regard for the interests of all parties who are or may hereafter be entitled under the said settlement [*or will or otherwise as the case may be*] subject to the provisions and restrictions in this Act contained, and are necessary for the protection of the estates subject to the said settlement [*or otherwise*]. It is ordered that the petitioner A. B. [*or other the person intrusted with the conduct of the proceedings*] be at liberty to institute an action [*or to conduct the defence in the action of* v. , *or to present a petition to the House of* , *or to oppose the Bill presented to the House of* , *for the construction of a railway from* to , *or other proceedings, describing them*]. And It is ordered that the costs and expenses in relation thereto be raised and paid by means of [*any one of the modes sanctioned by the section*].

SEC. 17.
14. Order
sanctioning
proceedings
for protec-
tion.

15. SEC. 20.
Dedications
for streets,
etc.

The Court being of opinion that it is proper and consistent with a due regard to the interests of all parties interested in the said settled estates, that parts thereof should be laid out for streets, roads, squares, and gardens, It is ordered that such parts of the said settled estates as the said trustees, with such consent as aforesaid, shall lay out in streets, roads, squares, and gardens, do vest in the trustees or the trustee for the time being of the said testator ;

or,

Let such parts of the said estate as the judge shall approve be from time to time laid out, with the approbation of the judge, for streets, &c., either to be dedicated to the public or not. Let the parts so to be laid out remain and be vested in the trustees or trustee for the time being of the said will upon such trusts for securing the continued appropriation thereof to the purposes aforesaid, in all respects as the judge shall approve ;

or,

The Court being of opinion that subject to the provisions and restrictions in the said Acts contained, the parts of the said settled estates coloured pink in the map or plan, referred to in the affidavit of , filed the day of , should be laid out for streets, roads, paths, squares, gardens, and other open places, and for sewers, drains, and watercourses, as delineated on the said plan, doth order that the same be laid out accordingly [*continue with clause vesting the dedications in the trustees*].

16. SEC. 22.
Conveyance.

Let execute the deed or deeds of conveyance of the said estate to the purchaser or respective purchasers thereof, on such sale being effected.

Let the said , or proper persons, be ap-

pointed trustees of the parts of the said estates to be laid out. And Let the said [trustees of the will or settlement], convey such parts of the said estate, so as to vest the same in the said , upon such trusts for securing the continued appropriation thereof for the purposes aforesaid, in all respects as the judge shall direct.

The three following forms are among those appended to the Orders of 1878, being there numbered Nos. 2, 3, and 4 respectively, and are required to be used. SEC. 26.

[Title same as petition, Form 1, ante.]

Let all parties concerned attend at my Chambers at on at o'clock on the hearing of an application on the part of [the petitioners] that notice of the application intended to be made by a petition presented in the above matters on the day of requiring A. B. and C. D. severally to notify whether he assents to or dissents from such application, or submits his rights and interests so far as they may be affected by such application to be dealt with by the Court; may be given by [state the manner in which it is proposed to give the notice, and the time within which the notification is to be required] or in such other manner as the judge may think fit.

17. Summons for directions as to notices.

Dated this day of
This summons was taken out by
of , solicitors for the applicant.

18. Form of
notice.

[*Title same as Petition, Form 1, ante.*]

Take notice that [*name petitioners and their addresses as in petition*] have presented a petition in the above matters praying that [*as in petition, but describing the lands, messuages, or tenements as in the petition*], and it is intended to apply to the said Court for an Order in accordance with such prayer, and you are [*severally*] hereby required to notify in writing within after the service hereof whether you assent to or dissent from such application, or submit your rights or interests so far as they may be affected by such application to be dealt with by the Court, such notification is to be delivered to the petitioners' solicitors, or left for them at the address specified at the foot hereof, and may be so delivered by transmitting the same to them by post at such address.

If no notification shall be so delivered or left within the time above limited you will be deemed to have submitted your rights and interests to be dealt with by the Court.

In the event of your dissenting from such application and desiring to be heard in opposition to the application you are by your notification to require notice to be given to or left for you or your solicitor at a place to be specified within 3 miles from the site of Temple Bar, London, of the day on which the petition is fixed for hearing.

You or your solicitor can, upon reasonable notice to the under-named A. & B., inspect and peruse the petition without payment of any fee, and you are entitled at

your own expense to have a copy of such petition furnished to you.

Dated the day of .

A. & B.

*[Address within 3 miles of the site of
Temple Bar, London].*

Petitioners' Solicitors.

To *[name the person or all persons to be served pursuant to the above section]*.

NOTE.—A copy of the above notice, with a notification at the foot thereof to be filled up by you, is sent herewith.

Copy Notice.

19. Notifi-
cation.

In pursuance of a notice, of which the above is a copy, served on me on the day of , I hereby notify that I*

Dated this day of .

To Messrs. .†

* Here insert "assent to the application," or "dissent from the application," or "submit my rights and interests so far as they may be affected by the application to be dealt with by the Court."

And if you dissent and desire to be heard in opposition thereto, add "And I desire to be heard in opposition to the application, and require notice to be given to at [naming a place within three miles of the site of Temple Bar, London] of the day fixed for the hearing of the petition."

† *Signature and address.*

20. Sec. 27.
Affidavit in
support of
application
to dispense
with notice.

[*Title as in Form 1, ante.*]

I, L. M., of [address and description], make oath and say as follows :

1. A. B. is entitled under the settlement in the petition mentioned to [show the smallness or remoteness of the interest, or add:—The respondents C. D., E. F., and G. H. hold interests in the property subject to the said settlement and now proposed to be dealt with similar to that of the said A. B.].

2. The said A. B. left England on or about the of , and the petitioners are unable to discover his whereabouts, although they have made diligent inquiry, and it is uncertain whether the said A. B. is alive or dead.

Or The said A. B. is now resident in , and could not be served with notice without expense disproportionate to his interest in the property now proposed to be dealt with.

12. Order
dispensing
with notice.

It appearing that the concurrence or consent of A. B. to this application has not been obtained, and it appearing that the said A. B. cannot be found [or that it is uncertain whether the said A. B. be living or dead, or that notice cannot be given to the said A. B. without expense disproportionate to the value of the subject matter of this application]. It is ordered that notice to the said A. B. be dispensed with on the ground that the rights [or interests] of the said A. B. are small [or remote or are similar to the rights or interests of C. D., E. F., and G. H., who have been heard upon and concurred in this application, or otherwise as the case may be], and that the said A. B. be deemed to have submitted his rights and interests to be dealt with by the Court.

But this order is to be subject to and so as not to affect the rights, estates, and interests (if any) of any person or persons claiming under the ultimate limitation of the said settled estates to the right heirs of the said testator, other than the persons appearing on this application.

22. SEC. 29.
Reservation
of rights.

The following form is one of the forms in the Appendix to the Orders of 1878, being there numbered No. 12, and is required to be used.

23. SEC. 30.
Notice to
trustees.

[*Title same as petition, Form 1, ante.*]

Take notice that [name petitioners and their addresses as in petition] have presented a petition in the above matters praying that [as in petition, but describing the lands, messuages, or tenements, as in the petition], and it is intended to apply to the said Court for an Order in accordance with such prayer. This notice is given to you in pursuance of the above Act because you are seised or possessed of an estate in trust for , whose consent or concurrence to or in the application is required by the Act. You or your solicitors can upon reasonable notice to the under-named A. and B. inspect and peruse the petition at the address specified at the foot hereof without payment of any fee, and you are entitled at your expense to have a copy of such petition furnished to you.

Dated this day of .

A. & B.

Address,

Solicitors for the petitioners.

To [name the persons to be served pursuant to the above section].

An affidavit of service of this notice on the trustees must be produced at the hearing if the trustees do not appear (Order 16).

24. Sec. 31.
Advertisement.

The following form is one of the Forms given in the Appendix to the Orders (No. 13), and is required to be used.

[Title same as petition, Form 1, ante.]

By direction of the Master of the Rolls (or the Vice-Chancellor), notice is hereby given that an application by petition has been made to the Court of the said judge for a sale or for powers to grant leases of the above-mentioned hereditaments (or otherwise according to the circumstances), and the Court has directed the application to be adjourned (or adjourned till), and any person, whether interested in the estate or not, may on or before apply to the said Court by motion for leave to be heard in opposition to or in support of such application. The petition may be inspected on application to Messrs. A. and B. of , the solicitors for the petitioners.

25. Notice
of motion
for leave to
be heard.

[Title as in Form 1, ante.]

Take notice that this Honourable Court will be moved before his Lordship , at , on the day of , 187 , or so soon thereafter as counsel can be heard by Mr. , as counsel for L. M., of , in the county of , Esquire

[*or other description*], that leave may be given to the said L. M. to appear and be heard in opposition to [*or in support of*] the application made to the Court in the above-mentioned matter.

Dated this day of , 18 .

C. D., of ,

The solicitor for the said A. B.

To Messrs. A. & B. of ,

The solicitors for the petitioners.

This Court doth order that the said L. M. be ^{26. Order.} at liberty to appear and be heard in opposition to [*or in support of*] the application made to the Court by the said petition.

If the motion for leave to be heard has been made ex parte, add the terms as to costs on which the order is made.

[*Title of petition.*]

I, A. B., of [*address and description*], make oath and say as follows :

27. SEC. 32.
Affidavit
that no ap-
plication
made to
Parliament

1. I have perused the petition preferred in this matter by [*names of petitioners*], to her Majesty's High Court of Justice, on the day of 18 , under the provisions of the above-mentioned Act.

2. Neither the said petitioners nor any or either of them, nor any other person entitled to or interested in the hereditaments mentioned in the title or heading of the said petition, have or has heretofore applied to either House of Parliament for a private Act to effect the same or a similar object to that for which the sanction of this Honourable Court is prayed by the said petition [*or as may be*].

3. [*Show means of knowledge.*]

28. Sec. 33.
Notice
indorsed.

And let notice of this order be indorsed upon the probate of the will of the said [or the said indenture of settlement].

[*Registration where necessary.*] And let a duplicate or memorial of this order be registered in the Registry of Deeds, in the county of .

Or, And the Court being of opinion that it is not practicable or expedient that notice of this Order should be recorded on the settlement or otherwise, doth direct that no record of this Order need be made.

See No. 23 of the Orders of 1878.

29. Sec. 34.
Application
of money
arising out
of mining
leases.

Let all money to be set aside out of the rents or payments to be reserved on any such leases as directed by the said Act, be paid to the trustees [or trustee] for the time being of the said will [or settlement].

Or be paid from time to time, within, &c., after, &c., paid by the lessee or respective lessees into Court, to the credit of *Ex parte* [name of the applicant], in the matter of the Settled Estates Act, 1877, "money set aside out of the rents reserved on the leases of the settled estates of," &c.

30. Sec. 35.

And let the said trustees apply the same to some one or more of the purposes mentioned in the 34th section of the said Act, without any application to the Court.

31. Sec. 36.
Interim
investment
and pay-
ment of
income.

And, until such money can be applied to one or more of the purposes mentioned in the said Act, let the same be from time to time invested by such trustees [or trustee] in the purchase of [any one of the investments authorized for cash under the control of the Court]. And

let the interest during the life of the petitioner

[*the person who would have been entitled to the rents and profits*], to accrue due on the [name of investment] as to be purchased, be from time to time as the same accrue due paid to the said petitioner

Or if payment into Court ordered.

And let, until, &c., [*as above*], the said sums, when so respectively paid into Court, be laid out, &c., in trust in the said matters the like account, and let the interest, &c. [*as above*]

Or upon a sale.

And let, until the said money can be so applied, the said trustees from time to time invest the same, or the unapplied portion thereof for the time being, in the purchase of [name of stock], in the names of the said trustees, and receive the interest thereof, and pay the same to, &c. [*the person entitled to the rents and profits*], [or apply the same upon the same trusts and subject to the same powers and provisions in all respects as are contained in the said will or settlement concerning the rents and profits of the said estate hereby directed to be sold].

Let the costs and expenses of the petitioner and of the said [trustees and other parties], of and incident to this application, be taxed by the taxing master. And let the amount thereof, when so taxed, be raised and paid by the said trustees out of any funds that may now or hereafter be in their hands subject to the trusts of the said will [or settlement].

32. Sec. 41.
Costs.

Or be a charge on the said hereditaments.

Or be a charge upon the lands, situate at being hereditaments included in the same settlement, and subject to the same limitations.

Or be raised by sale or mortgage of a sufficient

part of the said hereditaments, with the approbation of the judge. And in case the same shall be raised by mortgage, let such mortgage be settled by the judge, and be executed by all necessary parties as the judge shall direct. And let [tenant for life or trustees], keep down the interest of such mortgage. And let the money to arise by such sale or mortgage be applied in payment of such costs.

Or be paid out of the rents and profits of the said hereditaments.

Or on a sale—Let the petitioner be at liberty to apply at chambers for payment of such costs out of the purchase-money.

And see the order in *Re Hurle's Settled Estates*, 2 H. & M. 204.

33. SEC. 49.
Sum-
mons for
appoint-
ment of
guardian
and leave to
apply or
consent.

The two following forms are included in the Appendix to the Orders of 1878 (Nos. 5 & 6), and are required to be used.

[Title same as *Petition, Form 1, ante.*]

Let all parties concerned attend at my Chambers at _____, on _____, at _____ o'clock, on the hearing of an application on the part of [the petitioners].

That A. B. or some other proper person may be appointed guardian of C. D., an infant, and that E. F. or some other proper person may be appointed guardian of G. H., an infant, for the purpose of making on behalf of such infants [or consenting on behalf of such infants to] an application proposed to be made by a petition presented on the _____ day of _____, by the above-

named applicants for an Order in accordance with the prayer of such petition, and (in case the infants are tenants-in-tail) that such guardians may be directed to make [or consent to] such application.

Dated this .

This summons was taken out by ,
of , solicitors for the applicants.

Let all parties concerned attend at my Chambers at , on , at o'clock, on the hearing of an application on the part of [*the petitioners*].

That A. B. or some other proper person may be appointed guardian of C. D., an infant, and that E. F. or some other proper person may be appointed guardian of G. H., an infant, for the purpose of being served with a notice requiring them on behalf of such infants, within clear days after service thereof, to notify whether they assent to or dissent from an application proposed to be made by a petition presented on the day of by the above-named applicants for an Order in accordance with the prayer of such petition, or submit the infants' rights or interests so far as they may be affected by such application to be dealt with by the court, and (in case the infants are tenants in tail) that such guardians may be directed to notify that they, on behalf of such infants, assent to [or dissent from] such application [or submit the infants' rights or interests, so far

34. Summons for appointment of guardian to be served with notice and for leave to deliver notification.

as they may be affected by such application, to be dealt with by the Court].

Dated this day of .

This summons was taken out by
of , solicitors for the applicants.

For the evidence to be produced in support of these summonses respectively, see Orders 10 & 12, and the Summary of the Practice.

35. Orders
on the
foregoing
summonses.

This Court doth appoint A. B. guardian of C. D., an infant, and E. F. guardian of G. H., an infant, for the purpose of making on behalf of such infants [or consenting on behalf of such infants to], the application proposed to be made by the said petition.

In the case of infants tenants in tail add :

And doth direct that the said A. B. and E. F. be at liberty to make [or consent to] such application.

Or—This Court doth appoint A. B. guardian of C. D., an infant, and E. F. guardian of G. H., an infant.

And let the said [petitioners] be at liberty to serve notices of the application proposed to be made by the said petition on the said A. B. and E. F.

And let the said A. B. and E. F. within clear days after service upon them of such notices respectively notify whether they assent to or dissent from the said application, or submit the infants' rights or interests respectively, so far as they may be affected by the said application, to be dealt with by the Court.

In the case of infants tenants in tail, add :

And this Court doth direct that the said A. B.

and E. F., do notify, that they, on the behalf of such infants respectively, assent to [or dissent from] the said application [or submit the infants' rights or interests respectively, so far as they may be affected by such application, to be dealt with by the Court].

IN LUNACY.

In the Matter of A. B., a Lunatic.

The State of Facts and Proposal of C. D., the committee of the estate of the said A. B.

86. Proposal of committee to make or consent to an application on behalf of a lunatic.

1. By an inquisition taken at _____, on the day of _____, the above named A. B. was found to be a person of unsound mind [follow the words of the inquisition].

2. The above-named C. D. was, by an Order dated the _____ of _____, committed with the care and management of the estate of the said A. B. [follow the words of the order appointing him].

3. The said A. B. is entitled (*inter alia*) under a settlement dated _____, and made between [or under the will dated _____ of _____ deceased], to certain hereditaments situate at _____, in the parish of _____, and county of _____ [or to an interest in certain hereditaments &c., specifying the nature of it].

4. A petition has been presented entitled in the matter of the hereditaments hereinbefore mentioned, and in the matter of the Settled Estates Act, 1877, by [the petitioners' names], whereby it is proposed to apply to his Lordship the Master of the Rolls, [or the Vice-Chancellor _____], for an order that [follow the prayer of the petition]. The said petition has been served upon the said C. D. as committee of

the said A. B. [*or, notice of the said petition has been served, etc.*]

5. [*Allegations as to the expediency or otherwise of the order applied for by the petitioners, as in Form 2.*]

Or, *if the committee proposes to present the petition on behalf of the lunatic*

4. [*Allegations as to the expediency or otherwise of a lease or sale of the hereditaments hereinbefore mentioned.*]

5. For the purpose of carrying into effect such lease [*or sale*], it will be necessary to make an application to the Court by petition under the Settled Estates Act, 1877.

The said C. D. therefore proposes—

That he be directed to make [*or consent to, or oppose*] the said application [*or deliver a notification in reply to the said notice so served upon him as aforesaid, notifying that he consents to, or intends to oppose, the said application.*]

And the said C. D. craves leave, etc.

37. Special
Report of
Master in
Lunacy.

In the Matter of A. B. a Lunatic.

To the Right Honourable the Lord High Chancellor of Great Britain.

Whereas [*state the effect of the committee's proposal*].

Now I direct that the said C. D. be at liberty to make [*or consent to, or oppose*] the said application [*or to deliver a notification giving his consent to, or notifying that he intends to oppose, the said application*].

All which I humbly certify to your Lordship.

This report when indorsed by the judges having

jurisdiction in lunacy forms the authority of the committee to act in the proceedings in the Chancery Division of the High Court (Order 11).

The following five forms are included in the Appendix to the Orders of 1878 (Nos. 7 to 11 inclusive), and are required to be used.

38. SECS. 50
& 51.
Examination
of married
women.

[Title same as petition, Form 1, ante.]

Form of
request.

The petitioners , in a petition presented in these matters on the day of , request that A. B. of, &c. [C. D. of, &c. and E. F. of, &c.], being a solicitor [or solicitors], and a perpetual commissioner [or perpetual commissioners] to take the acknowledgment of deeds by married women, may be appointed for the purpose of any or either of them examining the petitioners G. the wife of H. I. and K. the wife of L. M.; and N. the wife of O. P., of, &c., respectively touching their knowledge of the nature and effect of the application intended to be made by the petition, and to ascertain whether they the said G. I. and K. M. respectively freely desire to make such application, and whether she the said N. P. freely desires to consent to such application.

Name such
as may be
required to
examine all
the married
women who
are to be
examined.

We, the solicitors for the petitioners, hereby certify that neither of them, the said A. B., C. D., and E. F., is the solicitor for the petitioner, or for any party whose concurrence or consent to the application is required.

Dated this day of .
 A. and B. solicitors for the
 petitioners.

Address.

The Master of the Rolls [*or the Vice-Chancellor*] appoints the said
 for the purposes mentioned in the above
 request.

E. F.

Chief Clerk.

39. Sum-
mons.

[*Title same as petition, Form 1, ante.*]

Let all parties concerned attend at my
 Chambers at on at o'clock,
 on the hearing of an application on the part of
 the petitioners in a petition presented
 in this matter on the day of , that
 A. B. of, &c., and C. D. of, &c. [*and if the
 married women are within the jurisdiction,
 add being solicitors*] be appointed for the
 purpose of any or either of them examining
 the petitioners G. the wife of H. I., and K.
 the wife of L. M., and N. the wife of O. P.,
 of, &c., respectively touching their knowledge
 of the nature and effect of the application
 intended to be made by the said petition,
 and to ascertain whether they the said G. I.
 and K. M. freely desire to make such appli-
 cation, and whether she the said N. P. freely
 desires to consent to such application.

Dated this day of .

This summons was taken out by ,
 of , solicitors for the applicant.

[*Tit lesame as Petition, Form 1, ante.*]

The examination of the petitioner G. the wife of H. I., and K. the wife of L. M., and of N. the wife of O. P. of*

40. Examination.

We, the said G. I., K. M., and N. P., having been this day respectively examined apart from our respective husbands touching our knowledge of the nature and effect of an application intended to be made to the High Court of Justice by a petition presented in this matter on the day of by us the said G. I. and K. M. and others, for answer thereto severally say that we are aware of the nature and effect of the said intended application, and we the said G. I. and K. M. severally freely desire to make such application, and I, the said N. P., freely desire to consent to such application. As witness our hands this day of

Witness to the sig-
nature of the said
G. I., K. M., and
N. P. }

Q. R.,

Address.

* Insert the names of all who can be conveniently examined by the same person and at the same time.

[*To be at the foot of the above Examination.*]

41. Certificate of examination.

I, the undersigned A. B., being the person appointed by the Master of the Rolls [or the Vice-Chancellor] for the purpose of examining the above-named G. the wife of

H. I., K. the wife of L. M., and N. the wife of O. P., hereby certify that I have this day of examined the said G. I., K. M., and N. P. apart from their respective husbands touching their knowledge of the nature and effect of the application intended to be made by the petition above referred to, and I have taken such examination in writing as above set forth, and I further certify that at the time of such examination I explained to them the nature and effect of the said application, and I am satisfied that they were aware of the nature and effect of such application, and that they the said G. I. and K. M. freely desire to make the said application, and that the said N. P. freely desires to consent to the said application.

42. Affidavit
verifying
examina-
tion.

[*Title same as Petition, Form 1, ante.*]

I, Q. R. of , make oath and say that I was present and did see G. I., K. M., and N. P. respectively named in the above petition, sign the examination or paper writing annexed hereto and now produced and shown to me marked A, and that the signatures G. I., K. M., and N. P. attached thereto are respectively the proper hand-writings of G. the wife of H. I. of , K. the wife of L. M. of , and N. the wife of O. P. of . And I further say that I was present and did see A. B. sign the certificate or paper writing annexed hereto and now produced and shown to me marked B, and that the signature A. B.

attached thereto is the proper handwriting of A. B. of &c. And I say that the signature Q. R. attached to the said paper writings as a witness is my handwriting.

The following was the order made in Re Boyd's 43. Order in Settled Estates (8 Ir. R. Eq. 76), and shows the Re Boyd's arrangement of an intricate order under the Settled Estates Act.

The Court being of opinion that it is proper and consistent with a due regard to the interests of all parties entitled under the said will of H. B. deceased, dated , that a lease of the premises in the title hereof mentioned, being part of the settled estates comprised in the said will in conformity with the terms contained in the proposal of the said M. & G. dated , should be authorized, subject as hereinbefore mentioned, and the said F. B., by his counsel, in open Court, so consenting,

The Court doth authorize a lease to be executed accordingly.

And let power to grant such lease in conformity with the said Act be vested in the petitioner H. M. B.

And let the same be granted for a term of 40 years from the day of , 1873, at the several yearly rents of £ (or at the option of the lessor the royalties in the said contract mentioned) £ and £ , subject as to all of the said premises to the clause of surrender upon the terms stated in the said proposal, but such lease is to be subject to the provisions and restrictions in the said Act contained, and in addition thereto is to contain such

covenants, conditions, and stipulations as the judge shall approve, and is to be settled by the judge.

Let three-fourths of the said rents (or of the aforesaid royalties and rents as the case may be) be set aside and invested as directed by the said Act, and let all money to be so set aside be paid to two trustees to be appointed at chambers and named in the said lease, upon the trusts and for the purposes mentioned in the said Act.

Let the same be from time to time invested by such trustees in the purchase of _____, in their names and during the minority of the said H. H. B. the minor.

Let the interest or dividends to accrue on the said stock be from time to time as same accrues due paid into Court with the privity of the Accountant-General of the Court of Chancery to the credit of the account entitled in his books "In the Matter of C. E. B. and H. H. B. minors."

Let notice of this order be endorsed on the probate of the said will of H. B. deceased.

Let two proper persons be appointed at chambers to be trustees for the purposes aforesaid.

And this Court doth declare the petitioner entitled to her costs and expenses properly and necessarily incurred of and incident to the said petition, this order thereon, and the proceedings incident thereto, including the proceedings connected with the approval on behalf of the said petitioner of the lease so to be executed.

And the Court doth also declare the said F. B. entitled to his costs of the said application and this order thereon.

And refer it to the Taxing Master to tax the same.

And let the amount thereof when so taxed be

paid out of the rents and profits of the hereditaments of the said minor H. H. B. included in the said will by the receiver over the said H. H. B.'s estate, and out of such moneys as may be in his hands as such receiver.

FORMS OF CONVEYANCES.

Lease under
secs. 4—15.

A lease granted under the order of the Court by virtue of *secs. 4—15* of the Act will necessarily depend for its form upon the particular circumstances of the case, and the particular covenants, conditions, and stipulations imposed by the Court (*sec. 5*). A simple lease under *sec. 4* will not vary much from the common form of lease of an analogous character. The limitations of the will and settlement must be recited, as well as the terms of the order of the Court. The testatum will contain the words, “in pursuance and by virtue of the said order, dated, &c., and in consideration, &c.” The covenants will be in the same form as in a lease under *sec. 46* (see *post*), and will be followed by the same proviso if the lease is executed by the tenant for life. But if under *sec. 12* another person is appointed to execute the lease as lessor, he will only give the modified covenants given by trustees or mortgagees.

Conveyance
on sale.

A conveyance upon a sale under *sec. 16* of the Act may take effect either, (1) as if under a power of sale contained in the settlement, or (2) by way of revocation and appointment (*sec. 22*). A form of conveyance in the first-mentioned manner will be found in *Davidson*, vol. 2, part 1 (4th ed.), p. 411; in the second manner in *Prideaux* (8th ed.), vol. 1, p. 362.

The deed must recite the limitations of the will or settlement; the agreement (if any) for sale; the order of the Court authorizing the sale; payment of purchase-money into Court; approval of the draft conveyance.

The testatum in the former of the above-mentioned cases contains nothing special. In the latter case it runs as follows :—

“In pursuance of the said order in this behalf, and for the purpose of carrying into effect the said sale, and in consideration of the said sum of £ , paid by the said C. D. [*purchaser*] as hereinbefore is mentioned, he the said A. B. [*tenant for life*], in exercise of the power for this purpose conferred upon him by the said Act, and of all other powers (if any) him hereunto enabling, Doth hereby revoke all the uses, trusts, and provisions by and in the said will of the said X. Y. declared and contained concerning the farm, lands and hereditaments hereinafter described and intended to be hereby assured, and doth hereby appoint that all [*parcels and general words, omitting “all the estate” clause*] shall from and immediately after the execution of these presents go, remain, and be to the use of the said C. D., his heirs and assigns for ever.”

The tenant for life, if he execute the deed, will give covenants for title in the following form :—

“And the said A. B. to the extent only of his life estate, or other estate in the said premises under the said will of the said X. Y., or otherwise, howsoever, and not further or otherwise, doth hereby for himself, his heirs, executors, and administrators, covenant with the said C. D., his heirs and assigns ” [*for right to convey ; quiet enjoyment ; freedom from incumbrances, and further assurance, in the common form*].

If, however, a person other than the tenant for life executes the conveyance (*sec. 22*), he will

only give the covenant usually given by trustees or mortgagees.

Lease under
sec. 46.

For a form of lease by a tenant for life under sec. 46, see *Woodfall, Landlord and Tenant* (9th ed.), p. 1022. The form of such a lease does not differ very materially from that of an ordinary lease, and contains only the following special parts. The recitals should show clearly the lessor's title as tenant for life within the meaning of the section. The operative words run thus :—

“He the said A. B. [*lessor*] doth by these presents made in exercise and execution of the power vested in him under and by virtue of the Settled Estates Act, 1877, and of all other statutes, powers, authorities, estates, rights, and interests in anywise enabling him in this behalf, &c.” [*proceed as in common form*].

The lessee's covenants should be made with the lessor, “and his assigns,” and the usual lessor's covenants should be followed by the following proviso :—

“Provided always, and it is hereby agreed and declared, that neither the heirs, executors, or administrators of the said A. B. (but only his assigns) shall be liable for any breach of the above covenants happening after the death of the said A. B. And it is hereby declared and agreed, that whenever the assigns of the said A. B. are hereinbefore mentioned, such word ‘assigns’ shall be construed and deemed, and taken to include, the persons or person for the time being entitled to the reversion of the said demised premises immediately expectant upon the determination of the said lease hereby granted, unless there be something in the subject or context repugnant to such construction.”

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